

File

CONSULAR CONVENTION WITH THE SOVIET UNION

HEARING
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
FIRST SESSION
ON
EXECUTIVE D, 88TH CONGRESS, 2D SESSION

JULY 30, 1965



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CONSULAR CONVENTION WITH THE SOVIET UNION

(Executive D, 88th Cong., 2d Sess.)

FRIDAY, JULY 30, 1965

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met pursuant to notice, at 10:05 o'clock, in room 4221, New Senate Office Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Gore, Symington, Clark, Hickenlooper, Aiken, and Case.

The Chairman. The committee will come to order:

The committee is meeting this morning to hear the Honorable Dean Rusk, Secretary of State, testify on the consular convention between the Soviet Union and the United States. The convention and a protocol relating to it was signed at Moscow on June 1, 1964, by Ambassador Kohler for the Government of the United States and Foreign Minister Gromyko for the Government of the Union of Soviet Socialist Republics.

The committee held an executive hearing on July 12, 1965, to hear the testimony of Mr. Leonard Meeker, Legal Adviser of the Department of State, and Mr. Richard Davis, Acting Assistant Secretary of State for European Affairs.

The committee met in executive session July 20, 1965, to consider the convention and decided at that time to take it up formally and submit it to the Senate for its advice and consent.

PURPOSE OF CONSULAR TREATY

It is the committee's understanding that the treaty is in most respects a normal consular convention. It is also our understanding that this treaty contains certain extraordinary provisions for the protection of American citizens and consular officials in the Soviet Union which are not normally included in consular conventions.

The committee would be pleased to hear your comments, Mr. Secretary, on these special provisions for the protection of Americans in the Soviet Union and how they might be expected to operate.

There has been some uncertainty as to whether this treaty will actually be followed by the opening of consulates and as to how many and where they might be. It is our understanding that the treaty spells out the conditions under which consular relations might be conducted and defines the rights and status of consular personnel, but it has no direct bearing on the actual establishment of consulates.

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We are advised that consulates can be established now if the two Governments so desire, even in the absence of a consular treaty.

We would appreciate having your comments on these and any other matters pertaining to the treaty which you consider appropriate.

Senator Hickenlooper?

Senator HICKENLOOPER. I want to correct a misunderstanding. I understood you to say in the opening statement that the committee had decided to submit this to the Senate for confirmation.

The CHAIRMAN. We will proceed with hearings with a view to presenting it to the committee. The committee would have to vote on it after we have had committee hearings.

Senator HICKENLOOPER. That is what I thought but the statement was that the committee had met and decided to submit it to the Senate for confirmation.

The CHAIRMAN. The consular convention referred to will be inserted in the record at this point.

(The consular convention follows:)

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88TH CONGRESS 2d Session	}	SENATE	}	EXECUTIVE D
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CONSULAR CONVENTION WITH RUSSIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CONSULAR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS, TOGETHER WITH A PROTOCOL RELATING THERETO, SIGNED AT MOSCOW ON JUNE 1, 1964

JUNE 12 (legislative day, MARCH 30), 1964.—Convention was read the first time and, together with the message and accompanying papers, was referred to the Committee on Foreign Relations and was ordered to be printed for use of the Senate

THE WHITE HOUSE, June 12, 1964.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a consular convention between the United States of America and the Union of Soviet Socialist Republics, together with a protocol relating thereto, signed at Moscow on June 1, 1964.

I transmit also, for the information of the Senate, the report by the Acting Secretary of State with respect to the convention.

I recommend that the Senate give early and favorable consideration to the convention and protocol submitted herewith and give its advice and consent to their ratification.

LYNDON B. JOHNSON.

(Enclosures: (1) Report of the Acting Secretary of State; (2) consular convention with the Union of Soviet Socialist Republics, with protocol, signed at Moscow June 1, 1964.)

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DEPARTMENT OF STATE,
Washington.

THE PRESIDENT,
The White House:

The undersigned, the Acting Secretary of State, has the honor to lay before the President, with a view to its transmission to the Senate to receive the advice and consent of that body to ratification, if the President approves thereof, a consular convention between the United States of America and the Union of Soviet Socialist Republics, together with a protocol relating thereto, signed at Moscow on June 1, 1964.

The convention is the result of intermittent discussions since 1933, preliminary negotiating discussions in 1960, and a continuing series of negotiation sessions since last August. Its provisions, like consular provisions in force between the United States and many other countries, are designed to regulate the consular affairs of each country in the territory of the other country and to formalize, so far as practicable, the understandings of the two countries in regard to the treatment to be accorded consular officials and employees. The convention covers such matters as the status of a consular establishment, the duties and functions of consular officers, and the rights, privileges, and immunities of the consular personnel of each country stationed in the territory of the other country. More specifically, the convention contains provisions relating to definitions (art. 1); opening of consular establishments and appointment of consular officers and employees (arts. 2 through 6); consular functions (arts. 7 through 15); and rights, privileges, and immunities (arts. 16 through 29). The protocol, which constitutes an integral part of the convention, construes and amplifies certain provisions of the convention.

Most of the provisions of the convention are similar in substance to provisions in consular convention between the United States and other countries.

Special reference is made to certain provisions of the convention which represent a significant advance in protection for U.S. citizens in the Soviet Union, as follows:

Article 12, paragraph 2, provides that authorities of the receiving state shall immediately inform a consular officer of the sending state of the arrest or detention in other form of a national of the sending state, and paragraph 1 of the protocol provides that such notification shall take place within 1 to 3 days from the time of arrest or detention, depending on conditions of communication.

Article 12, paragraph 3, provides that a consular officer of the sending state shall have the right without delay to visit and communicate with a national of the sending state who is under arrest or otherwise detained in custody or is serving a sentence of imprisonment, and paragraphs 2 and 3 of the protocol provide that such rights shall be accorded within 2 to 4 days of the arrest or detention of such national, depending upon his location, and shall be accorded on a continuing basis.

Article 19, paragraph 2, provides that consular officers and employees who are nationals of the sending state shall be immune from the criminal jurisdiction of the receiving state. This paragraph will insure the security of U.S. Government consular personnel in the Soviet Union.

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Provisions of the convention other than those to which special reference is made in the preceding paragraphs are similar in substance to provisions in consular conventions between the United States and other countries. For example, article 10 of the convention, which contains provisions regarding competency and authority of consular officers in connection with the settlement of estates, is almost identical to article 6 of the convention with Korea signed on January 8, 1963 (TIAS 5469; S. Ex. B, 88th Cong., 1st sess.), and article 18 of the convention with Japan signed on March 22, 1963 (S. Ex. I, 88th Cong., 1st sess.).

Article 30 provides that the convention shall be subject to ratification, that the ratifications shall be exchanged at Washington, that the convention shall enter into force on the 30th day following such exchange, and that it shall remain in force until 6 months from the date on which one Government informs the other of its desire to terminate it.

It is hoped that the convention will be given favorable consideration by the Senate.

Respectfully submitted.

W. AVERILL HARRIMAN.

(Enclosures: Consular convention with the Union of Soviet Socialist Republics, with protocol, signed at Moscow June 1, 1964.)

CONSULAR CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics,

Desiring to cooperate in strengthening friendly relations and to regulate consular relations between both states,

Have decided to conclude a consular convention and for this purpose have agreed on the following:

DEFINITIONS

ARTICLE 1

For the purpose of the present Convention, the terms introduced hereunder have the following meaning:

(1) "Consular establishment"—means any consulate general, consulate, vice consulate or consular agency;

(2) "Consular district"—means the area assigned to a consular establishment for the exercise of consular functions;

(3) "Head of consular establishment"—means a consul general, consul, vice consul, or consular agent directing the consular establishment;

(4) "Consular officer"—means any person, including the head of the consular establishment, entrusted with the exercise of consular functions. Also included in the definition of "consular officer" are persons assigned to the consular establishment for training in the consular service.

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(5) "Employee of the consular establishment"—means any person performing administrative, technical, or service functions in a consular establishment.

OPENING OF CONSULAR ESTABLISHMENTS, APPOINTMENT OF CONSULAR OFFICERS AND EMPLOYEES

ARTICLE 2

1. A consular establishment may be opened in the territory of the receiving state only with that state's consent.

2. The location of a consular establishment and the limits of its consular district will be determined by agreement between the sending and receiving states.

3. Prior to the appointment of a head of a consular establishment, the sending state shall obtain the approval of the receiving state to such an appointment through diplomatic channels.

4. The diplomatic mission of the sending state shall transmit to the foreign affairs ministry of the receiving state a consular commission which shall contain the full name of the head of the consular establishment, his citizenship, his class, the consular district assigned to him, and the seat of the consular establishment.

5. A head of a consular establishment may enter upon the exercise of his duties only after having been recognized in this capacity by the receiving state. Such recognition after the presentation of the commission shall be in the form of a exequatur or in another form and shall be free of charge.

6. The full name, function and class of all consular officers other than the head of a consular establishment, and the full name and function of employees of the consular establishment shall be notified in advance by the sending state to the receiving state.

The receiving state shall issue to each consular officer an appropriate document confirming his right to carry out consular functions in the territory of the receiving state.

7. The receiving state may at any time, and without having to explain its decision, notify the sending state through diplomatic channels that any consular officer is persona non grata or that any employee of the consular establishment is unacceptable. In such a case the sending state shall accordingly recall such officer or employee of the consular establishment. If the sending state refuses or fails within a reasonable time to carry out its obligations under the present paragraph, the receiving state may refuse to recognize the officer or employee concerned as a member of the consular establishment.

8. With the exception of members of the staff of the diplomatic mission of the sending state, as defined in paragraph (c) of Article 1 of the Vienna Convention on Diplomatic Relations, no national of the sending state already present in the receiving state or in transit thereto may be appointed as a consular officer or employee of the consular establishment.

ARTICLE 3

Consular officers may be nationals only of the sending state.

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ARTICLE 4

The receiving state shall take the necessary measures in order that a consular officer may carry out his duties and enjoy the rights, privileges, and immunities provided for in the present Convention and by the laws of the receiving state

ARTICLE 5

1. The receiving state shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending state of premises necessary for its consular establishment or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist the sending state in obtaining suitable accommodation for the personnel of its consular establishment.

ARTICLE 6

1. If the head of the consular establishment cannot carry out his functions or if the position of head of a consular establishment is vacant, the sending state may empower a consular officer of the same or another consular establishment, or one of the members of the diplomatic staff of its diplomatic mission in the receiving state, to act temporarily as head of the consular establishment. The full name of this person must be transmitted in advance to the foreign affairs ministry of the receiving state.

2. A person empowered to act as temporary head of the consular establishment shall enjoy the rights, privileges and immunities of the head of the consular establishment.

3. When, in accordance with the provisions of paragraph 1 of the present Article, a member of the diplomatic staff of the diplomatic mission of the sending state in the receiving state is designated by the sending state as an acting head of the consular establishment, he shall continue to enjoy diplomatic privileges and immunities.

CONSULAR FUNCTIONS

ARTICLE 7

A consular officer shall be entitled within his consular district to perform the following functions, and for this purpose may apply orally or in writing to the competent authorities of the consular district:

(1) To protect the rights and interests of the sending state and its nationals, both individuals and bodies corporate;

(2) To further the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state and otherwise promote the development of friendly relations between them;

(3) To register nationals of the sending state, to issue or amend passports and other certificates of identity, and also to issue entry, exit, and transit visas;

(4) To draw up and record certificates of birth and death of citizens of the sending state taking place in the receiving state, to record marriages and divorces, if both persons entering into marriage or divorce are citizens of the sending state, and also to receive such

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declarations pertaining to family relationships of a national of the sending state as may be required under the law of the sending state, unless prohibited by the laws of the receiving state;

(5) To draw up, certify, attest, authenticate, legalize and take other actions which might be necessary to validate any act or document of a legal character, as well as copies thereof, including commercial documents, declarations, registrations, testamentary dispositions, and contracts, upon the application of a national of the sending state, when such document is intended for use outside the territory of the receiving state, and also for any person, when such document is intended for use in the territory of the sending state;

(6) To translate any acts and documents into the English and Russian languages and to certify to the accuracy of the translations;

(7) To perform other official consular functions entrusted to him by the sending state if they are not contrary to the laws of the receiving state.

ARTICLE 8

1. The acts and documents specified in paragraph 5 of Article 7 of the present Convention which are drawn up or certified by the consular officer with his official seal affixed, as well as copies, extracts, and translations of such acts and documents certified by him with his official seal affixed, shall be receivable in evidence in the receiving state as official or officially certified acts, documents, copies, translations, or extracts, and shall have the same force and effect as though they were drawn up or certified by the competent authorities or officials of the receiving state; provided that such documents shall have been drawn and executed in conformity with the laws and regulations of the country where they are designed to take effect.

2. The acts, documents, copies, translations, or extracts, enumerated in paragraph 1 of the present Article shall be authenticated if required by the laws of the receiving state when they are presented to the authorities of the receiving state.

ARTICLE 9

If the relevant information is available to the competent authorities of the receiving state, such authorities shall inform the consular establishment of the death of a national of the sending state.

ARTICLE 10

1. In the case of the death of a national of the sending state in the territory of the receiving state, without leaving in the territory of his decease any known heir or testamentary executor, the appropriate local authorities of the receiving state shall as promptly as possible inform a consular officer of the sending state.

2. A consular officer of the sending state may, within the discretion of the appropriate judicial authorities and if permissible under then existing applicable local law in the receiving state:

(a) take provisional custody of the personal property left by a deceased national of the sending state, provided that the decedent shall have left in the receiving state no heir or testamentary executor appointed by the decedent to take care of his

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personal estate; provided that such provisional custody shall be relinquished to a duly appointed administrator;

(b) administer the estate of a deceased national of the sending state who is not a resident of the receiving state at the time of his death, who leaves no testamentary executor, and who leaves in the receiving state no heir, provided that if authorized to administer the estate, the consular officer shall relinquish such administration upon the appointment of another administrator;

(c) represent the interests of a national of the sending state in an estate in the receiving state, provided that such national is not a resident of the receiving state, unless or until such national is otherwise represented: provided, however, that nothing herein shall authorize a consular officer to act as an attorney at law.

3. Unless prohibited by law, a consular officer may, within the discretion of the court, agency, or person making distribution, receive for transmission to a national of the sending state who is not a resident of the receiving state any money or property to which such national is entitled as a consequence of the death of another person, including shares in an estate, payments made pursuant to workmen's compensation laws, pension and social benefits systems in general, and proceeds of insurance policies.

The court, agency, or person making distribution may require that a consular officer comply with conditions laid down with regard to: (a) presenting a power of attorney or other authorization from such nonresident national, (b) furnishing reasonable evidence of the receipt of such money or property by such national, and (c) returning the money or property in the event he is unable to furnish such evidence.

4. Whenever a consular officer shall perform the functions referred to in paragraphs 2 and 3 of this Article, he shall be subject, with respect to the exercise of such functions, to the laws of the receiving state and to the civil jurisdiction of the judicial and administrative authorities of the receiving state in the same manner and to the same extent as a national of the receiving state.

ARTICLE 11

A consular officer may recommend to the courts or to other competent authorities of the receiving state appropriate persons to act in the capacity of guardians or trustees for citizens of the sending state or for the property of such citizens when this property is left without supervision.

In the event that the court or competent authorities consider that the recommended candidate is for some reason unacceptable, the consular officer may propose a new candidate.

ARTICLE 12

1. A consular officer shall have the right within his district to meet with, communicate with, assist, and advise any national of the sending state and, where necessary, arrange for legal assistance for him. The receiving state shall in no way restrict the access of nationals of the sending state to its consular establishments.

2. The appropriate authorities of the receiving state shall immediately inform a consular officer of the sending state about the arrest or detention in other form of a national of the sending state.

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3. A consular officer of the sending state shall have the right without delay to visit and communicate with a national of the sending state who is under arrest or otherwise detained in custody or is serving a sentence of imprisonment. The rights referred to in this paragraph shall be exercised in conformity with the laws and regulations of the receiving state, subject to the proviso, however, that the said laws and regulations must not nullify these rights.

ARTICLE 13

1. A consular officer may provide aid and assistance to vessels sailing under the flag of the sending state which have entered a port in his consular district.

2. Without prejudice to the powers of the receiving state, a consular officer may conduct investigations into any incidents which occurred during the voyage on vessels sailing under the flag of the sending state, and may settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws of the sending state. A consular officer may request the assistance of the competent authorities of the receiving state in the performance of such duties.

3. In the event that the courts or other competent authorities of the receiving state intend to take any coercive action on vessels sailing under the flag of the sending state while they are located in the waters of the receiving state, the competent authorities of the receiving state shall, unless it is impractical to do so in view of the urgency of the matter, inform a consular officer of the sending state prior to initiating such action so that the consular officer may be present when the action is taken. Whenever it is impractical to notify a consular officer in advance, the competent authorities of the receiving state shall inform him as soon as possible thereafter of the action taken.

4. Paragraph 3 of this Article shall not apply to customs, passport, and sanitary inspections, or to action taken at the request or with the approval of the master of the vessel.

5. The term "vessel", as used in the present Convention, does not include warships.

ARTICLE 14

If a vessel sailing under the flag of the sending state suffers shipwreck, runs aground, is swept ashore, or suffers any other accident whatever within the territorial limits of the receiving state, the competent authorities of the receiving state shall immediately inform a consular officer and advise him of the measures which they have taken to rescue persons, vessel, and cargo.

The consular officer may provide all kinds of assistance to such a vessel, the members of its crew, and its passengers, as well as take measures in connection with the preservation of the cargo and repair of the ship, or he may request the authorities of the receiving state to take such measures.

The competent authorities of the receiving state shall render the necessary assistance to the consular officer in measures taken by him in connection with the accident to the vessel.

No customs duties shall be levied against a wrecked vessel, its cargo or stores, in the territory of the receiving state, unless they are delivered for use in that state.

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If the owner or anyone authorized to act for him is unable to make necessary arrangements in connection with the vessel or its cargo, the consular officer may make such arrangements. The consular officer may under similar circumstances make arrangements in connection with cargo owned by the sending state or any of its nationals and found or brought into port from a wrecked vessel sailing under the flag of any state except a vessel of the receiving state.

ARTICLE 15

Articles 13 and 14, respectively, shall also apply to aircraft.

RIGHTS, PRIVILEGES AND IMMUNITIES

ARTICLE 16

The national flag of the sending state and the consular flag may be flown at the consular establishment, at the residence of the head of the consular establishment, and on his means of transport used by him in the performance of his official duties. The shield with the national coat-of-arms of the sending state and the name of the establishment may also be affixed on the building in which the consular establishment is located.

ARTICLE 17

The consular archives shall be inviolable at all times and wherever they may be. Unofficial papers shall not be kept in the consular archives.

The buildings or parts of buildings and the land ancillary thereto, used for the purposes of the consular establishment and the residence of the head of the consular establishment, shall be inviolable.

The police and other authorities of the receiving state may not enter the building or that part of the building which is used for the purposes of the consular establishment or the residence of the head of the consular establishment without the consent of the head thereof, persons appointed by him, or the head of the diplomatic mission of the sending state.

ARTICLE 18

1. The consular establishment shall have the right to communicate with its Government, with the diplomatic mission and the consular establishments of the sending state in the receiving state, or with other diplomatic missions and consular establishments of the sending state, making use of all ordinary means of communication. In such communications, the consular establishment shall have the right to use code, diplomatic couriers, and the diplomatic pouch. The same fees shall apply to consular establishments in the use of ordinary means of communication as apply to the diplomatic mission of the sending state.

2. The official correspondence of a consular establishment, regardless of what means of communication are used, and the sealed diplomatic pouch bearing visible external marks of its official character, shall be inviolable and not subject to examination or detention by the authorities of the receiving state.

ARTICLE 19

1. Consular officers shall not be subject to the jurisdiction of the receiving state in matters relating to their official activity. The same applies to employees of the consular establishment, if they are nationals of the sending state.

2. Consular officers and employees of the consular establishment who are nationals of the sending state shall enjoy immunity from the criminal jurisdiction of the receiving state.

3. This immunity from the criminal jurisdiction of the receiving state of consular officers and employees of the consular establishment of the sending state may be waived by the sending state. Waiver must always be express.

ARTICLE 20

1. Consular officers and employees of the consular establishment, on the invitation of a court of the receiving state, shall appear in court for witness testimony. Taking measures to compel a consular officer or an employee of the consular establishment who is a national of the sending state to appear in court as a witness and to give witness testimony is not permissible.

2. If a consular officer or an employee of the consular establishment who is a national of the sending state for official reasons or for reasons considered valid according to the laws of the receiving state cannot appear in court, he shall inform the court thereof and give witness testimony on the premises of the consular establishment or in his own abode.

3. Whenever under the laws of the receiving state an oath is required to be taken in court by consular officers and employees of the consular establishment, an affirmation shall be accepted in lieu thereof.

4. Consular officers and employees of the consular establishment may refuse to give witness testimony on facts relating to their official activity.

5. The provisions of paragraphs 1, 2, 3, and 4 shall also apply to proceedings conducted by administrative authorities.

ARTICLE 21

1. Immovable property, situated in the territory of the receiving state, of which the sending state or one or more persons acting in its behalf is the owner or lessee and which is used for diplomatic or consular purposes, including residences for personnel attached to the diplomatic and consular establishments, shall be exempt from taxation of any kind imposed by the receiving state or any of its states or local governments other than such as represent payments for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such charges, duties, and taxes if, under the law of the receiving state, they are payable by the person who contracted with the sending state or with the person acting on its behalf.

ARTICLE 22

A consular officer or employee of a consular establishment, who is not a national of the receiving state and who does not have the status

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in the receiving state of an alien lawfully admitted for permanent residence, shall be exempt from the payment of all taxes or similar charges of any kind imposed by the receiving state or any of its states or local governments on official emoluments, salaries, wages, or allowances received by such officer or employee from the sending state in connection with the discharge of his official functions.

ARTICLE 23

1. A consular officer or employee of a consular establishment who is not a national of the receiving state and who does not have the status in the receiving state of an alien lawfully admitted for permanent residence, shall, except as provided in paragraph 2 of this Article, be exempt from the payment of all taxes or similar charges of any kind imposed by the receiving state or any of its states or local governments, for the payment of which the officer or employee of the consular establishment would otherwise be legally liable.

2. The exemption from taxes or charges provided in paragraph 1 of this Article does not apply in respect to taxes or charges upon:

(a) The acquisition or possession of private immovable property located in the receiving state if the persons referred to in paragraph 1 of this Article do not own or lease this property on the behalf of the sending state for the purposes of the consular establishment;

(b) Income received from sources in the receiving state other than as described in Article 22 of the present Convention;

(c) The transfer by gift of property in the receiving state;

(d) The transfer at death, including by inheritance, of property in the receiving state.

3. However, the exemption from taxes or similar charges provided in paragraph 1 of this Article, applies in respect to movable inherited property left after the death of a consular officer or employee of the consular establishment or a member of his family residing with him if they are not nationals of the receiving state or aliens lawfully admitted for permanent residence, and if the property was located in the receiving state exclusively in connection with the sojourn in this state of the deceased as a consular officer or employee of the consular establishment or member of his family residing with him.

ARTICLE 24

A consular officer or employee of a consular establishment and members of his family residing with him who are not nationals of the receiving state and who do not have the status in the receiving state of aliens lawfully admitted for permanent residence, shall be exempt in the receiving state from service in the armed forces and from all other types of compulsory service.

ARTICLE 25

A consular officer or employee of a consular establishment and members of his family residing with him who do not have the status in the receiving state of aliens lawfully admitted for permanent residence, shall be exempt from all obligations under the laws and regulations of

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the receiving state with regard to the registration of aliens, and obtaining permission to reside, and from compliance with other similar requirements applicable to aliens.

ARTICLE 26

1. The same full exemption from customs duties and internal revenue or other taxes imposed upon or by reason of importation shall apply in the receiving state to all articles, including motor vehicles, imported exclusively for the official use of a consular establishment, as applies to articles imported for the official use of the diplomatic mission of the sending state.

2. Consular officers, and employees of the consular establishment, and members of their families residing with them, who are not nationals of the receiving state, and who do not have the status in the receiving state of aliens lawfully admitted for permanent residence, shall be granted, on the basis of reciprocity, the same exemptions from customs duties and internal revenue or other taxes imposed upon or by reason of importation, as are granted to corresponding personnel of the diplomatic mission of the sending state.

3. For the purpose of paragraph 2 of this Article the term "corresponding personnel of the diplomatic mission" refers to members of the diplomatic staff in the case of consular officers, and to members of the administrative and technical staff in the case of employees of a consular establishment.

ARTICLE 27

Subject to the laws and regulations of the receiving state concerning zones entry into which is prohibited or regulated for reasons of national security, a consular officer shall be permitted to travel freely within the limits of his consular district to carry out his official duties.

ARTICLE 28

Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state, including traffic regulations.

ARTICLE 29

1. The rights and obligations of consular officers provided for in the present Convention also apply to members of the diplomatic staff of the diplomatic mission of the Contracting Parties charged with the performance of consular functions in the diplomatic mission and who have been notified in a consular capacity to the foreign affairs ministry of the receiving state by the diplomatic mission.

2. Except as provided in paragraph 4 of Article 10 of the present Convention, the performance of consular functions by the persons referred to in paragraph 1 of this Article shall not affect the diplomatic privileges and immunities granted to them as members of the diplomatic mission.

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FINAL PROVISIONS

ARTICLE 30

1. The present Convention shall be subject to ratification and shall enter into force on the thirtieth day following the exchange of instruments of ratification, which shall take place in Washington as soon as possible.

2. The Convention shall remain in force until six months from the date on which one of the Contracting Parties informs the other Contracting Party of its desire to terminate its validity.

In witness whereof the Plenipotentiaries of the two Contracting Parties have signed the present Convention and affixed their seals thereto.

Done in Moscow on June 1, 1964 in two copies, each in the English and the Russian language, both texts being equally authentic.

For the Government of the United States of America:

FOY D. KOHLER

Ambassador of the United States of America to the U.S.S.R.

For the Government of the Union of Soviet Socialist Republics:

A. GROMYKO

Minister for Foreign Affairs of the Union of Soviet Socialist Republics

PROTOCOL TO THE CONSULAR CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS

1. It is agreed between the Contracting Parties that the notification of a consular officer of the arrest or detention in other form of a national of the sending state specified in paragraph 2 of Article 12 of the Consular Convention between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics of June 1, 1964, shall take place within one to three days from the time of arrest or detention depending on conditions of communication.

2. It is agreed between the Contracting Parties that the rights specified in paragraph 3 of Article 12 of the Consular Convention of a consular officer to visit and communicate with a national of the sending state who is under arrest or otherwise detained in custody shall be accorded within two to four days of the arrest or detention of such national depending upon his location.

3. It is agreed between the Contracting Parties that the rights specified in paragraph 3 of Article 12 of the Consular Convention of a consular officer to visit and communicate with a national of the sending state who is under arrest or otherwise detained in custody or is serving a sentence of imprisonment shall be accorded on a continuing basis.

The present Protocol constitutes an integral part of the Consular Convention between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics of June 1, 1964.

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Done at Moscow on June 1, 1964 in two copies, each in the English and the Russian language, both texts being equally authentic.

For the Government of the United States of America:

FOY D. KOHLER

Ambassador of the United States of America to the U.S.S.R.

For the Government of the Union of Soviet Socialist Republics:

A. GROMYKO

Minister for Foreign Affairs of the Union of Soviet Socialist Republics

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The CHAIRMAN. We had decided to proceed with hearings if the committee so voted. That is what I meant to say.

Mr. Secretary, will you proceed?

STATEMENT OF HON. DEAN RUSK, SECRETARY OF STATE; ACCOMPANIED BY LEONARD C. MEEKER, THE LEGAL ADVISER, DEPARTMENT OF STATE; RICHARD H. DAVIS, ACTING ASSISTANT SECRETARY, BUREAU OF EUROPEAN AFFAIRS, DEPARTMENT OF STATE; AND DOUGLAS MacARTHUR II, ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS

Secretary RUSK. Mr. Chairman and members of the committee, I am very pleased to have with me this morning my colleague, Assistant Secretary of State Douglas MacArthur, the distinguished Legal Adviser to the Department of State, Mr. Leonard Meeker, and Mr. Richard Davis, the Deputy Assistant Secretary for European Affairs.

FIRST BILATERAL TREATY WITH THE U.S.S.R.

I shall speak relatively briefly, Mr. Chairman, on this matter that is before us. If the Senate approves this treaty for ratification, it will be the first treaty which we would have of a bilateral character between the United States and the Soviet Union.

Its subject matter is not dramatic, but nevertheless it is very important. I suppose that the earliest responsibility of the Department of State from the very beginning has been the protection of American citizens abroad. We have had some special problems in that regard in our relations over the years with the Soviet Union. We have had two different systems of law, an open society in relation with what is basically a closed society, with special problems and sensitivities and animosities particularly during the Stalinist period. And so we have had a number of continuing problems about giving adequate protection to our citizens who might be traveling in the Soviet Union.

At the present time there is an increase in the number of our citizens who are going there. We hope that the general situation will permit some increase in trade between ourselves and the Soviet Union, giving further emphasis to the importance of the normal type of consular relations that exist between us and many other governments.

This consular convention will help to normalize further our relations with the Soviet Union. It will help to reduce sources of friction between us.

Some of these incidents which have occurred with respect to the treatment of American citizens have been extremely sensitive. They have taken on very large political implications. They have at times required the intervention of the President of the United States with the Chief of Government of the Soviet Union.

If we can find ways to deal with such problems properly, through normal consular channels, then we feel that there would be a gain in the relations between our two great countries.

We feel also that this convention would encourage the Soviet Union to accept the conduct which other responsible nations accept in their treatment of foreigners and of foreign interests within their territory.

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It will place obligations upon the Soviet authorities to respect some of the elementary civil rights which are cherished by democratic nations.

Let me turn briefly to the important specific provisions of the convention and to the benefits which it will provide for American citizens. Apart from distinctive provisions on notification, consular access, and consular immunity, which differ from the pattern of our previous consular conventions, the convention follows the standard pattern of such conventions.

Like others it is a bilateral treaty designed to regulate the activities and functions of consular establishments and their officers and employees.

The provisions governing these activities and functions are comparable to those in our conventions with other countries. In my view this convention, which was carefully negotiated over an 8-month period following informal discussions between our two Governments beginning with my predecessor, Secretary Christian Herter, is advantageous to our national interests.

The convention, if ratified, will, of course, be a document of high value to both countries. It will provide much-needed regularization of traditional contacts between the two countries affecting the flow of people and of ships and, perhaps of growing importance, commerce.

Conversely, it will supply a reference point to reduce unnecessary misunderstanding. It is well known that the Soviet and American ways of doing things are often quite unlike. A common set of ground rules is desirable if they can be achieved. Since many more Americans visit the U.S.S.R. than Soviet citizens visit the United States, the convention has special importance for the United States.

CONSULAR PROVISIONS TO PROTECT AMERICAN VISITORS

About 12,000 American tourists visited the U.S.S.R. last year, while only 204 Soviet tourists came to the United States. Those figures on Soviet visitors to the United States do not include about 650 who came over on exchange programs of various sorts under official sponsorship.

Because we value so highly the protection of individual rights, the Convention's provisions on notification and access have particular significance. These clauses should improve markedly the ability of the Department of State to protect and assist the thousands of Americans who now visit the U.S.S.R. as tourists or on business or under the exchange program.

The current practice in the Soviet Union is to refuse access to arrested persons until after the completion of investigation, which under Soviet law can extend for 9 months. You probably recall the disappearance of Prof. Frederick Baghoorn in the U.S.S.R. in 1963. Only after 12 days did our Embassy in Moscow learn of his arrest. The Soviet authorities never allowed our officials to visit him in prison. If this Convention had been in effect in 1963, the Soviet authorities would have been obliged to notify us of his arrest within 3 days and to grant us consular access within 4 days.

The U.S.S.R. has never before given so specific a guarantee on access. Other governments have recognized the importance of the notification and access provisions in the United States-U.S.S.R. Conven-

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tion, and have indicated an interest in obtaining these benefits for themselves. We understand, for example, that the Japanese are currently preparing to negotiate a consular convention with the Soviets and hope to achieve the same access and notification provisions.

The British, we understand, are in the final stages of negotiating a consular convention with the U.S.S.R. which incorporates these safeguards.

IMMUNITIES FOR CONSULAR PERSONNEL

As an additional measure of protection which we regard as important, the Convention contains a special provision on immunity for consular personnel. Under this provision they will be immune from criminal prosecution. Related provisions of the Convention will protect against abuse of such immunity by Soviet consular officers.

These provisions specify first of all the right of the receiving state to declare consular personnel persona non grata. Thus by means of a persona non grata action we would be able to remove from this country any individual who abused his official privilege. The Convention also states that all persons enjoying immunity from criminal jurisdiction are obliged to respect the laws and regulations of the receiving state, including traffic regulations. Finally, the Convention provides for screening all nominees for consular assignments in advance, so that we would not have to accept as a consul any Soviet citizen to whom we objected.

The United States-U.S.S.R. Consular Convention, I wish to stress, does not itself authorize the opening of any consulates in either country. It merely provides a legal framework for their operation when open. If the present Convention is ratified, the Department of State plans to discuss with Soviet representatives the possibility of opening at least one American consulate in the Soviet Union.

Leningrad, the second largest city in the Soviet Union, and a favorite place for visiting Americans, is the most attractive of several possible sites for such a consulate.

The U.S.S.R. has not indicated where it might like to open a consulate in this country. In any discussion of the establishment of consulates we would be sure we receive at least as advantageous a location as we give.

I should like to add, Mr. Chairman, that we would expect to be in consultation with this committee with respect to any discussions which we have about opening one of our consulates there or one of their consulates here.

EFFECT OF CONVENTION ON ESPIONAGE AND SUBVERSION

My remarks would not be complete if I did not invite the committee's attention to the question of whether this Convention and any consulates established subsequently would result in opening the door to Communist espionage and subversion.

This possibility was, of course, carefully considered in consultation with other responsible agencies of our Government before we signed the Consular Convention. We are satisfied that the Convention would not materially affect this problem. If after ratification of the Convention we agree to an opening of a Soviet consulate in an American city, its employees will be subject to the same visa screening and entry

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controls as officers and employees of the Soviet Embassy in Washington, of whom some are now carrying on consular functions. They will also be subject to the same travel restrictions as now apply to Soviet officials assigned to Soviet missions in the United States. They would be subject to the expulsion provision of the Consular Convention.

Finally, a relatively small number of consular officials would make little difference in the total of Soviet citizens in the United States possessing immunity from criminal jurisdiction. As of July 1, 1965, there were 847 Soviet citizens residing in the United States of whom 249 officials and 150 dependents had diplomatic immunity.

These, I believe, are the most significant aspects of the Convention itself.

I would close, Mr. Chairman, with a remark on the place which this Convention occupies in the total atmosphere which exists at the present time between ourselves and the Soviet Union. There is no question that our relations at the present time are under strain. There is no question that the dangerous situation in southeast Asia has interfered significantly with the search for further points of agreement which many of us had hoped we could find following this signature of a nuclear test ban treaty.

I have had the privilege of appearing with this committee in executive session on more than one occasion to discuss this aspect of the matter and our relations with the Soviet Union. So, I do not suggest that the atmosphere today is good. But I would suggest that in the face of that atmosphere, and perhaps even a little bit because of it, we ought to pay attention to those points, whether they are minor and administrative in character, or broader such as in the disarmament field, we ought to pay attention to those points at which we think some progress can be made in getting our relations on a more normal basis.

A Consular Convention is a rather long-term affair. It attempts to put on an administrative and routine base, if possible, problems which otherwise stimulate tension and make more difficult the relations between our two countries.

So we would hope that the committee would give full consideration to the suggestion that even though we would like to see more substantial improvement in the relations between our two countries on broad political issues, and very especially on the dangerous issue of southeast Asia, nevertheless it is not too early to try to resolve some of these problems we have between us where we can, when we can. The consular convention makes it possible, therefore, for us to move forward quietly rather modestly in an attempt to eliminate some of the causes of friction which may exist between us and which may develop in the future as we attempt to give full protection to our citizens traveling in the Soviet Union.

I think that is all I need say at this time, Mr. Chairman, in order to move on to the committee's questions and comments.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Just to summarize a bit, this particular convention in and of itself does not establish any consulates?

Secretary RUSK. That is correct, sir.

The CHAIRMAN. It provides certain rights and obligations and so on in case they are established?

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Secretary RUSK. That is correct, sir.

The CHAIRMAN. What would be the effect, if it were ratified, upon the obligations of the present diplomatic representatives in the respective countries?

In other words, even though no further consulates were opened, would the rights for notification within certain terms provided in here apply to our Embassy in Moscow?

TERMS OF CONVENTION TO APPLY IMMEDIATELY

Secretary RUSK. Well, the rights, for example, of notification and access would apply for all American citizens. Therefore, those provisions would become operative for all of our citizens, including official personnel.

The CHAIRMAN. They would become operative insofar as their relations with our Embassy in Moscow is concerned even though no additional consulates were opened; is that not correct?

Secretary RUSK. That is correct.

The CHAIRMAN. So it has that immediate effect even though additional consulates are not opened?

Secretary RUSK. That is correct, sir. And there are important benefits—

The CHAIRMAN. This would be important, if I understand you correctly, in that we had, as you indicated, some 12,000 visitors to the Soviet Union last year?

Secretary RUSK. That is correct, sir.

The CHAIRMAN. So it does have an immediate effect, although the actual opening of additional consulates will await further agreement as to where they may be opened.

Secretary RUSK. Mr. Chairman, I feel that the provisions of the consular convention which have to do with the protection of people really are more important than the question of opening an additional consulate or two in each country.

CONSULATES CLOSED IN 1948

These are the problems which need resolution. The Soviet Union had three consulates in this country outside of Washington up until 1948. There was an incident in 1948 in the consulate in New York, which led to the expulsion of the Consul General because of his handling of this situation and at that point the Soviet Union withdrew its three consulates and asked us to withdraw our consulate which we then had at Vladivostok.

Senator SYMINGTON. I didn't follow.

Would you repeat that?

Secretary RUSK. Yes, sir. During the war and up until 1948, the Soviet Union had three consulates in this country. There was an incident in New York. One of the employees of the consulate jumped out of the window, you will remember, and the conduct of the consul general in that case was such that we felt it necessary to expel him. On that occasion the Soviet Union then closed up its three consulates in this country and asked us to close the consulate that we had in Vladivostok. So we have had Soviet consulates before in this country.

The CHAIRMAN. You had them before?

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Secretary RUSK. Yes, sir.

The CHAIRMAN. And as you stated correctly, it is possible for you to open consulates now, but without the protection provided in this convention; is that not correct?

Secretary RUSK. That is correct, sir.

The CHAIRMAN. Neither country has pressed the matter of opening consulates under present conditions; is that correct?

Secretary RUSK. That is correct.

The CHAIRMAN. So that while some people think that this does not have any effect until you open a consulate, it does in effect have a very important effect even though no more consulates are opened?

Secretary RUSK. It does indeed, particularly in the matter of protection of American citizens.

The CHAIRMAN. On this ground of protection of American personnel, I assume that as in most cases these rights are reciprocal? We would have to give notification in a similar manner in the case of the arrest of one of their citizens? It works both ways, doesn't it?

Secretary RUSK. That is correct, although our practice has been to give such notification in any event.

The CHAIRMAN. I understand. But we are talking about the proposed provisions.

Secretary RUSK. That is correct.

The CHAIRMAN. Regardless of what the practices are, all these rights are reciprocal, whatever they may be.

Secretary RUSK. That is correct, sir.

UNIQUE PROVISIONS OF THIS TREATY

The CHAIRMAN. Would you specify a little more concisely the difference between this convention and other conventional and ordinary conventions of this kind?

Secretary RUSK. May I, Mr. Chairman, call upon our distinguished legal adviser to comment on that point because he has examined it in some detail.

The CHAIRMAN. Yes, sir.

Mr. Meeker?

Mr. MEEKER. Mr. Chairman, the principal differences between this convention and other consular conventions which we concluded in the recent past are the following:

First of all, there is the provision on immunity from criminal jurisdiction. This is not present in other consular conventions to the same extent. There is in other consular conventions provisions concerning immunity from criminal prosecution of consular officers with respect to misdemeanors, but that immunity extends only with respect to misdemeanors.

Under the convention with the U.S.S.R., the immunity from criminal jurisdiction is complete.

Another difference is that the convention—

The CHAIRMAN. May I ask, you say complete. For this the remedy is expulsion, isn't it?

Mr. MEEKER. That is correct. It is simply that there may not be any criminal prosecution of a consular officer or employee for an offense.

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The CHAIRMAN. That is right.

Mr. MEEKER. The other principal difference relates to the obligation of notification. We have in this convention with the Soviet Union obligations on notification of arrest of citizens and access to citizens, which are much more specific than what we have in any other consular convention.

These rights are set forth both in article 12 and in a protocol to the convention. The protocol has three main paragraphs which we regard as being very important. In the first place, there is a right and a duty of notification of arrest within 1 to 3 days of the time of arrest. There is an obligation to give access to a consular officer in 2 to 4 days again from the time of arrest.

Finally, the protocol makes very clear that the right of access continues throughout any period of detention of a citizen of the other country, including a period of imprisonment to which a national of the other country might be sentenced.

Those are the main differences between this convention and the others that we have entered into.

The CHAIRMAN. What effect will this convention have on our other consular relations, that is with our consular relations in other countries?

Secretary RUSK. The usual consular convention includes a most-favored-nation clause, and others would have the right to raise with us establishing various privileges, but only on a basis of reciprocity.

The CHAIRMAN. Yes.

Secretary RUSK. It would be my prediction that since the general practice is different among countries which have the same kind of legal order and the same kind of general practice as we do, we would not expect that all of them would wish to move in this direction, because existing arrangements are, in general, satisfactory. But they would have the right to raise it.

If they were willing to extend to us the same privileges we would be asked to give them the same privileges.

The CHAIRMAN. What provisions in this convention provide for termination in case it has proved to be unsatisfactory for some reason? A notification of 6 months, isn't it?

Mr. MEEKER. Yes, sir.

The CHAIRMAN. For termination?

Mr. MEEKER. Yes, sir. Article 30 states that the convention shall remain in force until 6 months from the date on which one of the contracting parties informs the other of its desire to terminate its—

The CHAIRMAN. Does the convention have any bearing on the right of asylum, political asylum?

Mr. MEEKER. No, Mr. Chairman; it has no bearing at all on that.

The CHAIRMAN. Senator Clark, do you wish to ask some questions at this point?

Senator CLARK. Yes; I would like to.

The CHAIRMAN. I will come back later. I don't wish to monopolize the time.

Senator CLARK. How about Senator Hickenlooper?

Senator HICKENLOOPER. I have some questions but I will defer to Senator Clark.

The CHAIRMAN. We usually alternate from one side to the other, that is the custom.

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DEFINITION OF OFFICIAL ACTIVITY

Senator HICKENLOOPER. Mr. Secretary, article 19 states that consular officers and employees who are nationals of the sending state shall not be subject to the jurisdiction of the receiving state "in matters relating to their official activity."

Is it the sending state or the receiving state that will decide whether or not a matter relates to official activity?

Secretary RUSK. In the case of, say, a Soviet consular officer in this country, it would be for the American courts to decide whether matters to which you are now referring fell within his official acts or were personal in character. Our own courts would make that determination. We are now talking about civil jurisdiction, not criminal jurisdiction.

Senator HICKENLOOPER. How does that conflict with the act of state doctrine?

Secretary RUSK. Well, there are acts which are acts of state and there are acts which are acts of people, and this is the distinction which is being drawn here.

Senator HICKENLOOPER. I know we have the opinion of the State Department and the assurance that our own courts would determine whether the activity of the consular official or those under this immunity provision are in their official activity or not.

Secretary RUSK. That is correct, sir.

Senator HICKENLOOPER. With how many nations in the world do we have consular conventions or treaties, do you recall?

Secretary RUSK. There are about 35, Senator Hickenlooper, either covered by consular conventions as such or by other treaties which include provisions similar to consular conventions. I have that list here; I can insert it in the record if you wish.

Senator HICKENLOOPER. In how many of those conventions or treaties do we have the most-favored-nation clause?

Secretary RUSK. I am informed that more than half of them have the most-favored clause.

Senator HICKENLOOPER. That would be around 15 or 18.

Secretary RUSK. We can insert the exact figure in the record, 27.

Senator HICKENLOOPER. It was my understanding the other day that it was some 30.

Secretary RUSK. I think the larger number had to do with specific consular conventions and specific consular arrangements.

Senator HICKENLOOPER. Now as to the most-favored-nation clause in these treaties, we have agreed and are bound by the treaty to extend the same privileges to these other countries with whom we have consular conventions or agreements of this kind. So that upon their application we would be bound to extend the same criminal immunity against criminal prosecution to the nationals, consular officials, and others included in this list of immunity to all those other nations, is that correct?

Secretary RUSK. Provided that they were willing to do the same for ourselves on the basis of reciprocity.

Senator HICKENLOOPER. Oh, yes. It would have to be reciprocal.

Secretary RUSK. There has been, Senator, as you know, a growing tendency in diplomatic services to merge the diplomatic and the con-

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sular functions. The historical and traditional sharp separation of these functions is not as pronounced today as it might have been, say, 50 years ago. So, I think this is not as important a point as it might have been when many governments were using local nationals as their consuls and all sorts of other complications came in.

EXTENSION OF CRIMINAL IMMUNITY

Senator HICKENLOOPER. Do you have an estimate as to about how many additional people full immunity against criminal prosecution could be extended to under reciprocity as a result of the most-favored-nation clause if this treaty goes into effect?

Secretary RUSK. If all of them exercise that option our estimate is that approximately 400 officers and employees could be involved.

Senator HICKENLOOPER. So that if this treaty goes into effect with the criminal prosecution immunity provision in it for consular officers and certain others in the consulate, we would be extending the field of immunity—at least if they all applied for it on a reciprocal basis—we would be extending that criminal immunity in this country of foreign nationals to over 400?

Secretary RUSK. We would, sir.

This convention, as you will recall I indicated, carries with it an obligation on the part of these people to respect local law, including traffic regulations. But the great expansion of personnel subject to diplomatic immunity or special arrangements of that sort has come about through the multiplication of states and the presence in this country of the United Nations.

That has been a very great source of expansion of persons living within this country with diplomatic immunity.

Senator HICKENLOOPER. Yes; I merely wanted to know the number.

Secretary RUSK. Yes.

EFFECT OF CONVENTION ON U.S. POLICY TOWARD THE BALTIIC STATES

Senator HICKENLOOPER. We have never recognized the seizure of Latvia, Lithuania, and Estonia by the Soviets, and the forcible incorporation of those three nations into the Soviet Union, and yet we may have and probably do have Americans who visit those three areas because they have relatives or families or historic ties. What would we do about Americans that might get into trouble in Latvia, Lithuania, and Estonia?

Secretary RUSK. First of all, sir, this convention does not affect in any way the question of recognition of the absorption of those countries into the Soviet Union. Recognition there is similar to the general practice of recognition of states or of governments; that is, everything turns upon the intent of the government concerned—in this case ourselves. It would require us to make some formal statement of an intent to recognize or an act of recognition before that could come about.

So, this convention itself does not affect that.

Nor would it be affected by the establishment of consular districts there for the protection of our own citizens. We do have a bit of a dilemma there, Senator. If American citizens go into areas whose political status we do not recognize, we still have the responsibility of doing what we can to give those citizens adequate protection, and, as

you know, we have had some difficulties in the courts and otherwise about the limitations on the power of the U.S. Government to inhibit the travel of its citizens into areas where we cannot afford adequate protection.

So, our judgment and our position are quite clear. This does not affect the question of the recognition of the absorption of those three states.

Senator HICKENLOOPER. How would we deal with an American citizen who goes into one of those three states that we do not recognize as being under the sovereignty of or part of the Soviet Union.

What if one of our citizens gets into some difficulty?

Secretary RUSK. Well, Senator, I think that we—

Senator HICKENLOOPER. How would we handle that? Under this treaty would we be sending a consular officer into that area? That would be included in the so-called consular area if we established a consulate. What do we do now? Do we come out of Moscow?

Secretary RUSK. Senator, I think I know what I would do if I were a consular officer and one of our citizens got into trouble, but I think I had better let my lawyer make a comment on this. Mr. Meeker?

Mr. MEEKER. Senator, I think the issue here is what can the U.S. Government do in that kind of case to protect the interests, safety, and the welfare of an American citizen who may find himself in difficulty with the Soviet authorities.

I think our response would be to do everything that we could for his protection as a practical matter and we would do it with the assistance and the participation of consular officers whether from a consulate, if there were one outside of Moscow, or by consular officers from the Embassy in Moscow.

Senator HICKENLOOPER. Let me ask you this, to clarify your answer. Suppose an American citizen got into some difficulty and they put him in jail in Lithuania, Latvia, or Estonia, and our consular official went down there or tried to go down there to see him, would he go down waving this treaty and say, "I have a right to see this man," or would he go down there as an American official out of Russia saying, "I want to go into a land we don't recognize as being under the sovereignty of Russia to see this person."

Where would the right flow from?

Mr. MEEKER. Well, I think the right would be under the treaty and it would be a right vis-a-vis the Soviet Government because its officers were actually in control of the situation in the area, and our taking that view would be simply a means of enforcing rights which we think we have vis-a-vis the Soviet Government wherever their officials are in charge. That action on our part would imply no change at all in our stand about the seizure of the three Baltic States.

Senator HICKENLOOPER. You mean to say we would go in there under a claimed authority based upon the fact upon our view that it is a de facto control of those states rather than a de jure control of those states?

Aren't we getting close to the question of whether or not we recognize the seizure of those three states by Russia?

Mr. MEEKER. We would not make any statement and indeed take no position on the question of recognition de jure or de facto.

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What we would see would be that authorities of the Soviet Government in fact were in charge at the place where the American citizen was being detained, and because of that we would apply to the Soviet authorities for the enjoyment of U.S. rights under this treaty. We would do that without making any statement or taking any position to the effect that the three Baltic States were a part of the Soviet Union.

Senator HICKENLOOPER. We might take that position but could we sustain the right to do that?

Mr. MEEKER. I do not think that our rights under the treaty, our rights vis-a-vis the Soviet Government, relate to any question of recognition or nonrecognition of the seizure by the U.S.S.R. of particular areas of territory. There are also areas formerly belonging to Poland, to Czechoslovakia, to Rumania, which are now administered by the U.S.S.R. and on which the United States has taken no formal position at any time. I think that we would simply regard our rights under the treaty as being rights vis-a-vis the Soviet Government and without relation to any question of recognition of the absorption of territory.

Senator HICKENLOOPER. Let me ask you, and I hope this can be given as a formal statement and opinion that we may rely upon in connection with the consideration of this treaty.

THE CONVENTION AND FEDERAL POWERS

Is there anything in this convention or this treaty or the protocol surrounding it which will become incorporated in this as a treaty that in any way alters or changes the responsibilities or the rights of the central government of the United States by way of giving the central government of the United States rights which it did not otherwise possess under the Constitution?

In other words, we get down to the point of a treaty changing the basic reserve or granting powers of the Federal Constitution so far as the States and local communities, and the whole constitutional system, are concerned.

Is there anything here that changes the rights or the privileges that do not already exist in the central government?

Mr. MEEKER. Senator, there are provisions in the treaty dealing with tax exemption, for example, which have an impact on State law and on Federal law as well. Those provisions are comparable to the corresponding provisions in other consular conventions, and are not different from them in their effect.

With respect to the question of immunity from criminal jurisdiction and the possible question that might be asked—does this treaty cut down the jurisdiction of the States to prosecute for crimes—I think the answer is "No," because there is already a Federal statute which makes it impossible for States to prosecute consular officers.

Therefore, it seems to me that the answer to your question is that there is nothing in this treaty which, to any greater extent than other consular conventions already in force, has any effect on State law at all.

Secretary RUSK. In other words, there are no new departures of law in this convention, Senator.

REASONS FOR EXPANDED RECIPROCAL IMMUNITIES

Senator HICKENLOOPER. Mr. Secretary, why was it considered advantageous or necessary to depart from our tradition and in fact depart from the practice of establishing a unique provision in this treaty giving consular officials immunity from prosecution for all crimes which they might commit in this country?

We haven't done it with any other countries with the possible exception of misdemeanor activities to keep them from being harassed or something of that kind.

Why do we do it in this treaty?

Secretary RUSK. I think the basic reason for it is that the systems of government in our two countries are so dissimilar, and we have had difficulties over the years in both directions with respect to this matter. We felt that it would greatly simplify the relationship if we made clear that the consular officers and employees who would function under this convention would have the same diplomatic immunity as the diplomatic officers in embassies.

I think the real reason goes back into the background of difficulties which have arisen because of the differences in our two systems and different approaches to these problems.

Senator HICKENLOOPER. Do we have a limitation on the number of personnel that can be assigned to any consulate in this country?

Secretary RUSK. That would be a matter for discussion and negotiation and decision at the time that discussion of establishing consulates would come up. At that time, of course, we would, as I indicated be in touch with the committee about what the arrangements might be on that.

But that is subject to agreement with respect to the establishment of the consulate.

NUMBER OF EXPELLED PERSONNEL

Senator HICKENLOOPER. I made some inquiry and have quite a list of Soviet Embassy and consular officials who have been either arrested or expelled from this country since 1946, and it is a rather impressive list.

The Soviets can also retaliate by showing us a substantial list of Americans that they have asked to leave the Soviet Union, and I think it is very significant that we have had much more trouble in Soviet consulates and the Soviet Embassy than with any other country in peacetime. Is there any reason to think that we will not have a continued need for asking Soviet officials to leave this country because of improper activities of one kind or another?

Secretary RUSK. I think, Senator, that such cases will occur again. We in this country have an open society where 99.9 percent of the total information about our country is open to the public. Our approach to security and to classified information is that we cannot close up a society but that we try to protect the information, whether it is a particular military installation or classified material in the hands of the Government or whatever it might be.

Now, I think we would have to acknowledge that governments attempt to find out about such information. That attempt is resisted,

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and that leads to incidents such as you mentioned. I think there were some 18, over the years, as far as the Embassy in Washington is concerned.

Senator HICKENLOOPER. As far as what?

Secretary RUSK. Since 1946 about 18, and I believe since 1949 there have been about 20 Soviet officers or employees connected with the United Nations. As you pointed out, there is a certain reciprocity in this relationship. They have sent back some of ours. I don't think that that will come to an end but I do hope that the Convention will reduce misunderstandings and particularly be of assistance in not letting private citizens, tourists, businessmen, exchange people, and others get caught up in the atmosphere in which this other type of problem arises.

We think this Convention can make a substantial contribution to that.

Senator HICKENLOOPER. Well, we may not be talking about the same list. I have a much longer list than 18 who have been expelled from this country. There are two different categories but it may be twice that number. I haven't tabulated them at the present time.

Secretary RUSK. Senator, if you will excuse me, I think that part of that list has to do with the Embassy in Washington and the other part with the United Nations, if we are looking at the same list.

Senator HICKENLOOPER. Well, this is not too important a detail, but about 18 on the list to which you refer, and then I have another list of about 17 or 18, on that order, most of whom were expelled for intelligence activity. And then I have a list of a number who have been expelled from U.N. activities or international agency activities.

Secretary RUSK. That is right.

Senator HICKENLOOPER. Well, the numbers are not so important at the moment except that they illustrate what has been going on.

But to make this clear, we can understand the reasons which are traditional and historic for granting ambassadors and certain members of their families immunity from prosecution in the countries to which they are assigned. But I think it has probably been extended far too widely to attachés or to other people working for the Embassy.

But be that as it may, it has been that way. In other words, if we adopt this treaty, the criminal immunity which is now being given to certain people would extend to any crime committed by any consular officer or by anybody included in this list of immunity in the convention.

Secretary RUSK. Anyone who was accredited as a consular officer or employee who was a national of the sending state. There might be certain employees who would not have that immunity.

Senator HICKENLOOPER. Well, contained in the specifications in this treaty as to the immunity?

Secretary RUSK. Yes, sir.

Senator HICKENLOOPER. And that would include murder or any other crime?

Secretary RUSK. That is correct, sir. I might comment on that, sir, that up until 1948 when the Soviet Government had a consulate in New York they had five consular officers. In San Francisco at that time they had two consular officers and in Los Angeles they had one consular officer. I think it would be relevant—

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Senator HICKENLOOPER. How many did we have in Russia at that time?

Secretary RUSK. We had two consular officers in Vladivostok. But I would point out, sir, that in our Embassy in Moscow and in the Soviet Embassy here in Washington there are officers who are carrying on consular functions with diplomatic immunity because they double in brass, as it were. They are both officers of the Embassy and consular officers.

Senator HICKENLOOPER. Well, I think I will pass it on to somebody else now.

Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

The CHAIRMAN. Senator Clark.

Senator CLARK. Mr. Secretary, for the reasons you have so ably stated this morning, I will support this treaty and your position. I would like to ask you just a couple of questions about detail.

OFFICIAL ATTITUDE TOWARD EXTENDING IMMUNITY LIST

The State Department probably would have preferred a consular convention which did not contain immunity if it had been possible to negotiate one, would it not?

Secretary RUSK. This was discussed at the time because it was a new departure, but when we thought about it and thought about the position of our own people, we thought this was rather a good development. We concluded that there were reciprocal advantages in this so far as we were concerned.

Senator CLARK. So you made no effort to negotiate a treaty which would not include immunity for consular officials?

Secretary RUSK. This point was not in our original draft because it is not a part of our general practice. But when the matter was raised by the other side we gave it close examination. We felt that in view of the special circumstances of the character of the two societies that it would be advantageous to us to go ahead on this basis.

Senator CLARK. So you were not reluctant to accept the Russian view which might have been very difficult to change?

Secretary RUSK. That is correct. When we found that there were some problems here, I think we were the ones who actually proposed the present language.

Senator CLARK. But you are quite clear that on balance this treaty is in our interest?

Secretary RUSK. Yes, sir; I am.

Senator CLARK. Now, my understanding is that at an earlier executive hearing it was developed that the State Department had obtained the approval of the Department of Justice to this treaty; is that correct?

Secretary RUSK. That is correct, sir.

Senator CLARK. My understanding is that approval was obtained at the time when now Senator Robert Kennedy was Attorney General.

Secretary RUSK. That is correct, sir.

Senator CLARK. Thank you, sir; that is all.

The CHAIRMAN. Senator Aiken?

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SOVIET REPRESENTATION IN THE WESTERN HEMISPHERE

Senator AIKEN. Mr. Secretary, with how many of the Western Hemisphere countries does the Soviet Union exchange people of the rank of ambassador?

Secretary RUSK. There are eight: Argentina, Brazil, Canada, Chile, Cuba, Mexico, the United States, and Uruguay.

Senator AIKEN. I think you are right, about that. Do they have consular officers in any of those countries?

Secretary RUSK. It is my understanding—they don't have consulates as such.

Senator AIKEN. They work out of the embassy?

Secretary RUSK. They provide consular services from the embassies, and I suppose they also have, here and there, certain trade offices.

Senator AIKEN. How does the Soviet Union deal with the Dominican Republic, for instance?

Secretary RUSK. They are not present there at the present time.

Senator AIKEN. They have no diplomatic relations at all?

Secretary RUSK. That is correct, sir.

Senator AIKEN. I don't think I have any more questions.

The CHAIRMAN. Senator Gore?

Senator GORE. No questions.

INCREASED NUMBER OF TOURISTS

The CHAIRMAN. Mr. Secretary, you gave the figures for 1964 of approximately 12,000 American citizens visiting the Soviet Union. How many citizens of the Soviet Union came to the United States in that same year if you have that figure?

Secretary RUSK. Yes, I have that figure. During 1964 there were 204 Soviet tourists but in addition to that there were a number who came not as tourists but under the exchange program. Actually, in 1964 a total of 646 came under the exchange program, and according to my figures 204 came as tourists.

The CHAIRMAN. Have these figures been increasing in recent years?

Do you happen to have available the comparable figures, say, in 1950 or 1955 or 1960?

Secretary RUSK. They have been increasing somewhat. I have a figure here for tourists and exchange visitors for 1963, that is a total of 729. So it would appear that it is somewhat below the total for 1964, which was 850.

The CHAIRMAN. That is, Soviet citizens coming here?

Secretary RUSK. That is correct.

The CHAIRMAN. How about Americans?

Secretary RUSK. Under the exchange program?

The CHAIRMAN. Under exchange.

Secretary RUSK. There seems to be some further increase because during the first half of 1964 there were 160 Soviets coming here under the exchange program; during the first half of 1965 there have been 508 so that the exchange program has been steadily growing.

The CHAIRMAN. What about the Americans going to the Soviet Union, have they been increasing in the last several years?

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Secretary Rusk. The tourist traffic has been increasing quite substantially, Mr. Chairman, and, of course, growing numbers of people have been accepted there under the exchange program. You are aware of the track meet that is over there now, for example. I wonder if we could submit for the record, if the chairman wishes, a table covering the past 5 years to show what the trends have been and in what categories these travelers do visit each other's country.

(The following material was subsequently furnished for the record:)

Travel by tourists and exchange visitors between the United States and the U.S.S.R. for the past 5 years

	American travelers to the U.S.S.R.		Soviet travelers to the United States	
	Tourists (approximate)	Exchange visitors	Tourists	Exchange visitors
1960.....	12,000	958	600	585
1961.....	10,000	695	450	653
1962.....	9,000	1,161	77	952
1963.....	10,000	837	140	589
1964.....	12,000	874	204	646

The CHAIRMAN. I assume one of the reasons why you have been concerned about having a consular treaty is the increasing number of Americans going to the Soviet Union?

Secretary Rusk. That is correct, sir, and our responsibilities for offering them protection have been growing rapidly.

The CHAIRMAN. It is much easier now for American tourists to obtain visas to go to the Soviet Union than it was 5 or 10 years ago.

Secretary Rusk. Oh, yes, sir; it is really quite simple now, and the conditions for travel there have been greatly improved from the point of view of the ordinary tourist who would like to make contact with—I don't want to put in too much of a commercial here because we have been asking more people to visit America this year but it has been simplified and they do make it easy to travel to the Soviet Union these days.

There are restricted areas there as there are for their people in this country, of course.

INTEREST OF OTHER COUNTRIES

The CHAIRMAN. You mentioned in your initial statement that the Japanese, I believe, and other countries are interested in similar consular conventions.

Secretary Rusk. That is our information; yes, sir.

The CHAIRMAN. With the same provisions with regard to immunity and so on?

Secretary Rusk. That is correct, sir.

I mentioned that in connection with relations between them and the Soviet Union, I was not there talking about their own relations with us. We don't yet have an instance of one of the most-favored-nation countries asking us for the same kind of an agreement that we have with the Soviet Union. We just don't know whether one

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or the other of them might do that, or whether there would be a general inclination to do so. But there is a general interest in this type of agreement with the Soviet Union.

INCREASED TRADE WITH THE SOVIET UNION

The CHAIRMAN. Do you have any figures with regard to trade? Is this a reason why you anticipate the need for this treaty?

Secretary RUSK. From the point of view of ordinary consular services, there would be some convenience, for example, in our having a consulate in a place like Leningrad for providing usual services to shippers and businessmen. It is particularly important to the traveling businessmen for us to have adequate assurances that misunderstandings won't occur through inadvertence or occasional misconduct, something of that sort.

I think this convention would be in support of the possibilities of the increasing trade between our two countries.

TREATY NOT CONCERNED WITH EXTRADITION

The CHAIRMAN. Will this convention have anything to do with or any effect upon extradition procedures?

Secretary RUSK. None whatever, sir.

The CHAIRMAN. I believe you covered the criminal provisions as to their effect on State law. Mr. Meeker mentioned a statute that presently forbids a State from prosecuting a consular officer.

Mr. MEEKER. Yes, I did, Mr. Chairman.

The CHAIRMAN. Is that a law that is long on the books, or is that something new?

Mr. MEEKER. No; it has been long on the books. It is part of the judicial code. It is section 1351 of title 28 of the United States Code.

Senator AIKEN. Do we have an extradition treaty with the Soviet Union?

Mr. MEEKER. No; we do not, sir.

IMMUNITY OF CONSULAR OFFICIALS FROM STATE LAW

Senator HICKENLOOPER. Where does the authority of the judicial code come from that says that a State can't prosecute a consular officer who commits a crime against that State within a State.

Mr. MEEKER. It comes from a provision in the Constitution which provides for special jurisdictional arrangements with respect to foreign ambassadors and public ministers, and also with respect to consuls.

Senator HICKENLOOPER. That gives the Supreme Court jurisdiction over disputes; does it not?

Mr. MEEKER. Yes; and Congress has the right to regulate the jurisdiction of the Supreme Court and of the other Federal courts. And it has done so in this statute.

Senator HICKENLOOPER. That is the source of the authority?

Mr. MEEKER. Yes; it is.

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EFFECT OF VIENNA CONVENTION ON CONSULAR RELATIONS

The CHAIRMAN. What relation, if any, does this have to the Vienna Convention on Consular Relations?

Mr. MEEKER. Mr. Chairman, the Vienna Convention on Consular Relations is a multilateral treaty which was prepared at a conference held in Vienna 2 years ago. It will govern the consular relations among the countries which become parties to it.

It will be without prejudice to any special bilateral arrangement which individual States may elect to make with one another. If, for example, both the United States and the U.S.S.R. should become parties one day to the Vienna Convention on Consular Relations, our bilateral treaty would ordinarily control in the event of any differences in provisions between that multilateral treaty and our bilateral treaty.

The CHAIRMAN. Are we not signatories to the Vienna Consular Convention?

Mr. MEEKER. We have signed the convention, but it has not yet been ratified and has not yet entered into force in the United States.

The CHAIRMAN. Has the Soviet Union signed it?

Mr. MEEKER. They have not.

The CHAIRMAN. They have not signed it?

Mr. MEEKER. Not yet.

The CHAIRMAN. Does it have provisions similar to the provisions of this treaty?

Mr. MEEKER. They are similar in many respects, although the provisions on notification and access are not as stringent and precise as the provisions in the Soviet-United States Consular Convention, nor are the provisions on immunity the same.

The provisions on immunity in the Vienna Convention, the multilateral treaty, are comparable to the provisions in most of our standard bilateral consular conventions. In other words, there is not full immunity from criminal jurisdiction for consular officers and employees.

Senator HICKENLOOPER. Has the Soviet Union ratified this treaty yet?

Mr. MEEKER. No; they have not.

Senator HICKENLOOPER. It would not go into effect until both sides had formally ratified, deposited their instruments of ratification; is that correct?

Mr. MEEKER. That is correct.

Secretary RUSK. That is right.

Senator HICKENLOOPER. With regard to the immunity from criminal prosecution, which section of the treaty contains that?

Mr. MEEKER. That is in article 19, paragraph 2, which reads:

Consular officers and employees of the consular establishment who are nationals of the sending state shall enjoy immunity from the criminal jurisdiction of the receiving state.

Senator HICKENLOOPER. Well now, just what does that mean? The sending state sends over a chauffeur, a cook, and maids for the consulate or people of that kind but people who do not act in what we call an official capacity in conducting business for the government.

The immunity extends to them, too; won't it?

Mr. MEEKER. The immunity will extend only to those consular officers and employees who are agreed to by the two governments. This

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immunity would not extend to anyone to whom the two governments had not given their agreement. In effect, there would be lists of persons who would be entitled to the immunities of article 19.

Senator HICKENLOOPER. At the present time do you know of any people working in the Russian Embassy that are not Russian nationals?

Mr. MEEKER. Yes, they are Soviet nationals. The situation there, I think, is somewhat different because we have both the blue list of diplomatic officers and also the white list of servants and other persons who also have immunity if they are nationals of the sending state.

Senator HICKENLOOPER. Then we would just have to refuse to admit those people for that purpose, is that correct? That is, I am talking about domestic employees, domestics, and people who are not conducting official business as we normally understand it, for the sending country, but are employees of convenience, let's say, housekeepers, maids, chauffeurs, gardeners, and things of that kind?

Mr. MEEKER. They could be admitted perfectly well, but they would not enjoy the immunities of article 19, unless they were nationals of the sending state, and agreed to by us, in advance.

Senator HICKENLOOPER. I can't read it that way. It just says officers and employees of the consular establishment.

Secretary RUSK. Senator, the situation there is comparable to the same problem with respect to the Embassy or the U.N. mission. I indicated in my opening statement there were 847 Soviet citizens residing in the United States. Most of those are in the Embassy or United Nations, but of those 847 there were 249 officials and 150 dependents with diplomatic immunity. The others do not have diplomatic immunity, and this is customary in terms of the function and rank of the individuals concerned and that has worked out in time—

Senator HICKENLOOPER. This immunity that is contained in this consular treaty from prosecution does not extend to members of the family of the consul or the consul general, is that correct? It doesn't so state in the treaty.

Mr. MEEKER. The immunities would not extend to members of families.

Senator HICKENLOOPER. Unless the member of the family was an employee of the consulate?

Mr. MEEKER. And had been accepted for that purpose by the U.S. Government.

Senator HICKENLOOPER. I think that is all, Mr. Chairman.

Thank you, Mr. Secretary.

PROVISIONS OF WAIVING IMMUNITY

The CHAIRMAN. I notice in the section after that, it says:

This immunity from the criminal jurisdiction of the receiving state of consular officers and employees of the consular establishment may be waived by the sending state.

A case has recently been in the news involving this in Saigon, where there was a murder.

Do we waive normally immunity and allow them to be tried in Saigon or not? I would like an illustration.

Secretary RUSK. That matter is under discussion with the South Vietnamese Government at the present time, Mr. Chairman.

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This individual does have diplomatic immunity and the question of waiver is involved with respect to assertion of jurisdiction over him, but that matter is still under discussion between the two governments.

The CHAIRMAN. That would be the same case as under this treaty. I mean you could waive the immunity, either side could waive it if they cared to do so.

Secretary RUSK. That is correct. But it is for the Government to waive it, not for the individual to waive it.

The CHAIRMAN. That is a traditional provision in all treaties, isn't it?

Secretary RUSK. That is correct.

Senator GORE. Mr. Chairman, could I ask a question on that particular point?

The CHAIRMAN. Yes, sir.

Senator GORE. Mr. Secretary, although the case of this particular individual is questionable, you say you had diplomatic immunity which you have not to date waived, he was nevertheless apprehended and arrested by the Saigon Government, was he not?

Secretary RUSK. He turned himself in, Senator, and our consular officers there arranged for his proper safeguarding during the period of interrogation. These formalities have not been completed yet. But it does raise some very interesting problems about the jurisdiction of the courts.

Senator GORE. In that connection, I am inquiring as to the extent of immunity. I thought the immunity went beyond prosecution. I thought it included immunity from arrest and interrogation.

Secretary RUSK. Well, in the case of this particular individual, I think this is not a very good case to test the issue of immunity because he turned himself in and has been cooperating fully with the authorities on a voluntary basis so it does not raise as yet quite the same issues.

But again these are rather complicated problems possibly involving some precedents, and it may be that by the end of the day we will have an announcement there as to the way in which this has been worked out with the South Vietnamese Government.

I just don't know at the moment how those conversations stand.

RIGHT OF INDIVIDUAL DIPLOMAT TO WAIVE IMMUNITY

Senator GORE. Mr. Secretary, if the U.S. Government takes the position that a diplomatic official has no immunity unless he himself claims it, or on the other hand if by so-called voluntary submission or action this diplomatic official can waive immunity, then such rights as the U.S. Government itself may have will be absent when the right of waiver, whether voluntary or quasi-voluntary, is within the hands of the official himself.

I don't think that is a sound position.

Secretary RUSK. Well, Senator, again, it is a little difficult to get into the underlying principles of law in this particular case at this particular time. It has been a very short period. He does not have any authority to waive any immunity himself. That is a matter for governments to do. As of the time that I left the Department of State

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this morning, I did not have the answer as to what had been decided in consultation between our Government and the South Vietnamese Government. The South Vietnamese Government, again as of this morning, had not been exercising the authority of its criminal jurisdiction over this man. He had come and presented himself, and he had cooperated fully and he told his story.

Senator GORE. Well, Mr. Secretary, that doesn't answer my question. Even though he had voluntarily submitted himself, the question is whether the Government of South Vietnam has not trespassed upon the diplomatic immunity by retention and by interrogation.

Secretary RUSK. Well, Senator, there has been, so far as I understand it, no arrest, no process served, and, as a matter of fact, where he is may be the safest place for him from his own point of view.

Senator GORE. Well, however that may be, the question still remains whether or not under the circumstances which you have described there has not been trespass upon the official immunity of an employee of the Government of the United States.

Secretary RUSK. Well, these matters don't resolve themselves at the instant in which the question arises. This is for governments to consider and make a determination on. But I would add in this case, Senator, that the United States does not have jurisdiction over this man, and—

Senator GORE. Does not have what?

Secretary RUSK. Does not have jurisdiction over this man.

Senator GORE. How has that been?

Secretary RUSK. He has committed no crime against the United States. He cannot be tried in an American court.

The CHAIRMAN. What was that, I didn't hear that last remark. Did you say he could not be tried—

Secretary RUSK. I said this man could not be tried in an American court. He has committed no crime against the law of the United States, although he has said he killed a man out there, killed an American.

Senator GORE. I am not attempting to criticize the Department in this case, but the statements which you have made certainly arouse my curiosity, because behind the Iron Curtain they seem to have a way of inducing so-called voluntary action, and if the Department takes the position in all cases which you have taken here, it seems to me it raises very serious questions and problems.

Secretary RUSK. So far as I know, Senator, I haven't taken a position on this except that this matter is being discussed between our Government and the South Vietnamese Government.

In the case of an incident, in the case that you are concerned about—and properly so—if we insist upon the immunity, it is not the privilege of the individual concerned to waive it. He has no authority to waive. Immunity is a governmental function, and the assertion of the waiver of immunity is a governmental matter and does not rest with the discretion of the individual.

Senator GORE. Well, in the case that the individual does volunteer to the jurisdiction of a foreign government, does that foreign government have the power to exercise such jurisdiction in the absence of an assertion of immunity on the part of the Government of the United States?

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Secretary RUSK. Well, I will ask my legal friend to comment on that in a second. If you assume that the question of asylum is not involved here——

Senator GORE. Question of what?

POWER OF U.S. GOVERNMENT TO CLAIM IMMUNITY

Secretary RUSK. Asylum, political asylum, let's exclude that if we may. Then we would have a right to require the other government to deliver the man over to us who has diplomatic immunity.

Senator GORE. You assert that power?

Secretary RUSK. Yes, sir.

Senator GORE. That is right?

Secretary RUSK. That is correct.

Senator GORE. But you have not exercised it in this case?

Secretary RUSK. I might be able to answer that—you mean in the Saigon case?

Senator GORE. Yes.

Secretary RUSK. I might be able to answer that tomorrow morning, sir, but I am not able to answer it at 11:25.

Senator GORE. I think you have answered the important thing: You do have the right to assert jurisdiction and the employee himself has no right to——

Secretary RUSK. We have the right, sir, to deal with the question of immunity, but as I pointed out, we do not have the right to assert jurisdiction over this man or the crime that he said he committed or the act that he said——

Senator GORE. Do you have the right to deny jurisdiction of the Saigon government?

Secretary RUSK. Yes, sir; I suppose we would.

Senator GORE. This you have not done?

Secretary RUSK. That is correct, so far as I know now.

Senator HICKENLOOPER. To deny the jurisdiction of the Saigon government we would have to claim jurisdiction for this man.

Senator GORE. Yes.

Secretary RUSK. Then there would be no jurisdiction over this man by anyone.

The CHAIRMAN. He would go free.

Senator GORE. At least this poses some interesting problems.

Secretary RUSK. It does indeed, sir.

The CHAIRMAN. Don't you have any precedents of this kind? Has it ever occurred in our history where there has been a murder similar to this, not necessarily with the same motive, but a murder?

Secretary RUSK. We have looked through the record, Senator, and tested the memory of our very experienced staff and we haven't been able to find a precedent that seems relevant here.

The CHAIRMAN. There has been no case where you asserted immunity and a murderer has gone free?

Secretary RUSK. The people who have diplomatic immunity have behaved themselves rather well in such matters.

The CHAIRMAN. Or, on the contrary, are there precedents where in an apparently clear case like this you normally would waive immunity and allow him to be tried there? Have there been cases like that?

Secretary RUSK. But we just don't know, sir. We haven't had the

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IMMUNITY CLAIMED BY FOREIGN EMBASSY IN WASHINGTON

Senator HICKENLOOPER. We had a reverse case on that here a few years ago, didn't we, where some member of an embassy here shot somebody?

Secretary RUSK. Yes; I believe there has been one——

Senator HICKENLOOPER. And they claimed immunity for him and took him back home. I don't know what happened to him.

Secretary RUSK. Oh, yes; I believe there was a case.

Senator HICKENLOOPER. This was 4 or 5 years ago.

Secretary RUSK. But he was taken home or, rather, he went home.

Senator HICKENLOOPER. Yes.

The CHAIRMAN. Do you know whether they prosecuted him or not? Do all countries have this same situation in which they would not have jurisdiction at home to prosecute him in cases where it was committed abroad? Is that a very common principle?

Secretary RUSK. Not every country has the same situation that we do. Our law as I understand it, rests very heavily upon the common law principle of the locus of the act.

Senator HICKENLOOPER. Yes.

Secretary RUSK. And under other systems of law, it can be quite different where the law runs to the person rather than the place.

Senator HICKENLOOPER. So that in some countries the fact that you killed another citizen of that same country would give jurisdiction of trying him, is that right?

Secretary RUSK. I think it is possible, yes.

Senator HICKENLOOPER. I should ask Mr. Meeker this question as legal counselor of the State Department. Would there be any reason why we could not enact a statute in this country providing for punishment of a person who could enjoy immunity in another country from prosecution, to bring him back here and try him for a crime that he had committed while he was within the employ of the U.S. Government and while he was under the blanket of immunity if we cared to claim it.

We do it with the armed services, bring him back here and try him.

Mr. MEEKER. That precise question has never been tested in the Supreme Court. What has been tested is the assertion of military jurisdiction over civilians accompanying the Armed Forces, and the Supreme Court has held that such criminal prosecutions under military jurisdiction are not legally possible.

The question that you asked is one we have discussed in the past with the Department of Justice. They have felt that there are very substantial problems of a constitutional nature with a statute of that sort.

In fact, they have felt there were sufficient doubts so that no such legislation has been presented to the Congress for its consideration.

Senator GORE. Well, Mr. Secretary, I only raise these questions to suggest that you be very careful unless there be precedential consequences from the handling of this case.

Secretary RUSK. I understand.

Senator GORE. This is considerably magnified by the practice of Iron Curtain countries to induce so-called voluntary actions on the part of our citizens who may be in trouble.

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Secretary RUSK. We have ourselves, as a government, complete control over the issue of immunity, whether or not it is asserted on behalf of one of our officers abroad. In the particular case in Saigon, American officials have been with this man throughout the entire proceeding to assure his being properly treated.

AGREEMENTS ON TAX EXEMPTIONS

The CHAIRMAN. I think it is important to understand what the issues are. I wonder if we are through with this if you would elaborate, Mr. Meeker, about the tax exemptions because that is always a matter of importance, under article 21, I believe. Just explain what this means.

Mr. MEEKER. Article 21 provides real estate, of which the sending state or persons acting on its behalf is owner or lessee, and which real estate is used for either diplomatic or consular purposes, and this includes residences of personnel attached to the embassy and consulate, that real estate shall be exempt from taxation either State or local, other than assessments which might be made for local improvements or services rendered, such as water and sewer charges.

There is also an exemption in article 22 from income tax on any consular officer or employee who is not a national of the receiving state and who also is not a person who has been admitted for permanent residence. There is an exemption from the payment of any taxes on his official salary. Of course, he might conceivably have other income and that would not be exempt. What article 22 exempts is simply his official salary, wages, or allowances.

The CHAIRMAN. Does that extend to the employees of the consulate other than the officials?

Mr. MEEKER. It extends to whatever officers or employees are notified to the U.S. Government and accepted by us in that capacity.

The CHAIRMAN. And they would have to be nationals of the sending state. If they employed local people it would not affect them.

Mr. MEEKER. They would have to be either nationals of the sending state or a third state. They could not be either American citizens or aliens who have been admitted to the United States for permanent residence.

The CHAIRMAN. Yes.

How about article 23; what does that deal with?

Mr. MEEKER. Article 23 goes on to deal with other tax questions and provides once again that a consular officer or employee who is not a national of the receiving state and has not been admitted for permanent residence should be exempt from the payment of all taxes or similar charges by the receiving state or any of its political subdivisions for the payment of which the officer or employee of the consular establishment would otherwise be legally liable.

This relates to other kinds of taxes which might be imposed directly on the consular officer or employee.

The CHAIRMAN. A sales tax. Is that presently true of diplomatic officials?

Mr. MEEKER. Yes. They are exempt from the District of Columbia sales tax.

The CHAIRMAN. If they go into a store to buy a necktie they don't pay the sales tax?

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Mr. MEEKER. They have an exemption from sales tax.

The CHAIRMAN. I didn't know that.

Mr. MEEKER. On all kinds of merchandise.

The CHAIRMAN. That must confront the stores with a lot of problems, doesn't it?

Mr. MEEKER. The diplomatic personnel have cards of identity which show their status and show that they are entitled to an exemption, and when they do that then the tax is simply not charged.

The CHAIRMAN. They travel on an airplane; do they claim the tax exemption on a travel tax?

Mr. MEEKER. They are exempt from the tax on airplane tickets.

Senator HICKENLOOPER. It says right on the ticket so much tax.

Mr. MEEKER. This is an exemption which has been granted in American tax law for a long time.

The CHAIRMAN. You said a moment ago that the Department of Justice approved this treaty under the previous administration. The present administration has been consulted about it?

Secretary RUSK. The present Attorney General has also approved it, sir.

The CHAIRMAN. Why did you leave the record to show as if it was only approved by the previous one?

Secretary RUSK. I was asked about the previous one, sir. I just didn't add the present one, but I am happy to do so at this time.

The CHAIRMAN. Well, the present Attorney General does approve of this treaty?

Secretary RUSK. That is correct, sir.

The CHAIRMAN. Obviously from some of our mail, some of our citizens are concerned about the problem of espionage. This might in some way enhance the possibility of it; I think if you have anything further to say on that point, please do so. I personally don't see very much difference, if any, between this and what presently is going on.

Senator CASE. Mr. Chairman, may I ask a question?

I just want to call, specifically, attention to the testimony by Mr. Hoover, of the Federal Bureau of Investigation, before the House Subcommittee on Appropriations when he was there. I think for the regular budget of the Bureau for the fiscal year which began last July, he made a very specific statement about this, and related it to this particular treaty. I would like you to comment on the general point and also on the specific warning by Mr. Hoover, which would be most appropriate for the record.

The CHAIRMAN. Did you ask him to comment on that?

Senator CASE. I just suggested supplementing your own inquiry. I think it would be desirable to have a general statement in addition to a specific comment upon the concern expressed by Mr. Hoover for the record.

The CHAIRMAN. Yes, I was going to ask him to comment on that statement of Mr. Hoover who is part of the Department of Justice; is he not?

Secretary RUSK. Yes, sir.

The CHAIRMAN. It seems to me for the record we should have your views about this.

Secretary RUSK. I have already commented on that point, Mr. Chairman. I would be glad to comment further. I will start by saying

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that the Department of State and Department of Justice both recommend the approval of this consular convention.

The idea that there are going to be many consulates in many parts of the country does not conform to expectations here. We will be discussing, at the appropriate time and in full consultation with the appropriate committees of the Congress, the possibility of establishing, in our case, a consulate in Leningrad. The Soviet Union would presumably wish a consulate in a comparable city in this country. But it does not seem to me that we can deal with the problem of security on the basis of closing up the country.

We are an open society. Our problem is to protect our secrets, whether they are military installations or classified information in the hands of our Government. We undertake that in order not to have a closed society in this country, and if those who have the responsibility for protecting secret information succeed in doing it, there is no particular damage in having a few extra people added to the tens of millions who wander freely about the country observing and seeing and reporting on what they see and find.

The key problem here is the protection of classified information in an open society, and we do that at the source of the information rather than trying to close the society to those who might be curious about such things.

INTELLIGENCE OPERATIONS AND DIPLOMACY

The CHAIRMAN. I was under the impression, I am no expert in this field, that the serious intelligence work of all countries, not just this one, but all of them, are done by agencies specifically trained and prepared for that and this has been so since the beginning of time.

In an embassy, officials necessarily carry on intelligence work.

But it goes beyond that. The major part is traditionally carried out by a unique agency, such as the famous Scotland Yard in England.

Is that not so?

Secretary RUSK. That is correct, sir.

One of the classical functions of diplomats is to report to governments on what they observe in the countries in which they are posted.

The CHAIRMAN. Certainly.

Secretary RUSK. That is one of the functions of sending ambassadors and ministers and consuls abroad. But the problem of espionage is a very special one. We have, as Senator Hickenlooper pointed out, asked a number of Soviet officials to leave this country in connection with that kind of activity. They have sent some of our people home alleging that that kind of activity occurred. But that is a very special problem, and I have great confidence in the ability of the Federal Bureau of Investigation and others who might be charged with such duties to give us adequate protection in these matters.

The CHAIRMAN. Well, just to put it in perspective, this is traditional with all governments. During the thirties, there were many rumors, I don't know that I considered them as a fact, there was a good deal of this going on with regard to the Germans and Nazis, not only here but throughout South America. There used to be all kinds of stories about this, that all governments particularly in times of tension maintain rather extensive covert operations in this field.

The point I am trying to make is that it doesn't seem to me that consular treaties should themselves be judged, rejected, or approved on

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this basis. While that is a problem and always will be, I suppose, until we have some idyllic world government, but as long as we have nation states this is going to be a problem.

To allow it to influence us in our consideration of any particular consular treaty doesn't seem correct to me. While it is relevant, it is not an essential consideration in a consular treaty. Do you agree?

Secretary RUSK. And to the extent, sir, that we can build some peace in the world and establish normal relations, the problems raised by espionage diminish. It is in periods of tension and crisis and controversy and rivalry and armed confrontations where the problem of espionage grows.

Little by little we would hope we could move steadily toward a time when nations are not looking at each other with such intense curiosity from that point of view, and people can be a little more normal in their relations. We are not there yet. But in order to facilitate travel and facilitate trade and business relationships and exchange programs, it is a small step. It might be a tiny step in looking at the total problem but a step worth taking.

We have other interests beyond worrying about the curiosity of governments.

Senator CASE. Mr. Chairman, I think it is only fair to everyone to make this further comment. That as I read Mr. Hoover's further testimony, including an insertion that was put into the record by him, I do find that he said this would make the job of the FBI more difficult. I do not find that he said that he would oppose the treaty on this or any other ground.

I think that is a fair statement.

The CHAIRMAN. I suppose you could say the same thing about tourists. That even increasing the large number of tourists would make the job more difficult to some extent because tourists might undertake some form of espionage, might they not?

Secretary RUSK. That is correct, sir.

The CHAIRMAN. So because of that we wouldn't exclude tourism, would we?

Secretary RUSK. Tourists from any country, Mr. Chairman. Tourists from any country.

The CHAIRMAN. And the official government's policy is to encourage tourism, isn't it?

Secretary RUSK. Yes, indeed. We are drumming up tourist business. I talk to foreign ministers about tourism frequently when we get them over here.

The CHAIRMAN. Any other questions?

NEGOTIATIONS ON AIR ROUTES

Senator HICKENLOOPER. Just one other question, Mr. Chairman, on a collateral matter. We have had under consideration for some years the question of air routes to Moscow and from Moscow here. That seems to be in the doldrums in some way.

What has happened to that?

Secretary RUSK. It is still in a state of suspension, Senator. We have not moved ahead on that because there have been some general problems in our relations that have stood in the way. But this is another point where it might be possible for us to move when the

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opportunity arises. There will be required in any event after the conclusion of such an agreement a good deal of technical discussion between the airlines and the air officials on actual arrangements. But that has been marking time for the past several months.

Senator HICKENLOOPER. In other words, we haven't got very far with it yet.

Secretary RUSK. It has been initialed but it has not been signed, and we have not yet proceeded on the basis that it has been concluded.

Senator HICKENLOOPER. I see.

Thank you.

The CHAIRMAN. One last question. I understand that if this should be approved then an agreement specifically providing for one or more consulates will be submitted for consideration to this committee.

Secretary RUSK. Not an agreement as such. I indicated that we would consult with the committee with respect to the discussions that might lead to the opening of a consulate in the Soviet Union or their opening a consulate here. But such an opening of consulates would not require any further formal agreement.

The CHAIRMAN. It would not require ratification of the agreement. It would be an executive agreement in furtherance of this particular convention?

Secretary RUSK. Yes; we open and close consulates frequently. We closed, I think, 13 last year, if I remember and we opened almost the same number in new places. But we do that by arrangements between the executive branches of the respective Governments rather than by legislative treaty action.

The CHAIRMAN. Any further question, Senator Case?

Senator CASE. With regard to the matter of immunity, this agreement formalizes and does not broaden formal practice and traditional observance, is that correct?

Secretary RUSK. It does broaden it insofar as the usual consular convention is concerned, since it does apply the type of criminal immunity that is normal to diplomatic establishments.

Senator CASE. To that extent a larger number of people will be given diplomatic immunity.

Secretary RUSK. That is correct.

QUESTION OF DIPLOMATIC TRAFFIC VIOLATIONS

Senator CASE. Which leads me to my question, may I not expect a response from the Department of State to a suggestion I made many weeks ago about handling traffic violations and violations of motor vehicle laws in various States and in the District of Columbia? I hoped that the suggestions I made there, that this matter not be allowed to run on as in the past may be given serious consideration.

I would be glad to discuss it informally in advance of any formal answer.

Secretary RUSK. All right, sir, I will be glad to talk to you about it, Senator. This is a troublesome and vexatious kind of problem. It does carry with it problems of reciprocity.

Senator CASE. Of course.

Secretary RUSK. For us all over the world and the other way around, and we ourselves insist upon very high standard of compliance with local laws and regulations in such matters.

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We are trying to find an answer to that that would be generally acceptable and will meet the need. I think we have made some improvement but we are not home yet on it.

Senator CASE. The problem is perhaps more difficult for us because we are the host to more diplomats than other countries, and also because of the diversity of our jurisdiction.

But nevertheless, I hope that the suggestion that I made specifically of a point system, which is just one of many possibilities, would be given very serious consideration because I think violations are intolerant at times.

The CHAIRMAN. I will insert in the record a memo from Mr. Meeker dated July 8, 1965.

(The document referred to follows:)

DEPARTMENT OF STATE,
THE LEGAL ADVISER,
July 8, 1965.

To: H—Mr. John S. Leahy, Jr.

From: L—Leonard C. Meeker.

Subject: Comparative commentary and analysis of the United States-Soviet Union Consular Convention.

There is attached for transmission to the staff of the Senate Foreign Relations Committee a comparative commentary and analysis of the Consular Convention Between the United States and the Soviet Union. This paper contains virtually an article-by-article commentary upon provisions in the Soviet Consular Convention, along with a brief discussion as to areas of similarity and differences between this convention, the Vienna Convention on Consular Relations, and the United States-Japanese Consular Convention.

Attachment: As stated.

COMPARATIVE COMMENTARY AND ANALYSIS

The Consular Convention With the Soviet Union was signed on June 1, 1964. With few exceptions, hereafter considered, the convention is similar in substance to other consular conventions previously concluded by the United States with a number of countries. The following commentary and analysis will discuss the principal articles of this Consular Convention, and will indicate whether it differs in substance from the Consular Convention Between the United States and Japan, which entered into force on August 1, 1964, and the Vienna Convention on Consular Relations, signed by the United States on April 24, 1963.

A consular convention is a treaty in which the contracting parties regulate the activities and functions of consular establishments and their officers and employees. Such conventions provide, in addition, certain privileges and immunities for the consular establishments and their personnel. Privileges and immunities are provided in order to enable the consular officers of each contracting party to carry out their consular functions, inter alia, to assist and protect their nationals in the territory of the other party, in the manner authorized by the convention.

The impact of this convention on State law in the United States is limited to a few matters, such as tax exemptions, in which consular conventions have traditionally affected State law. The convention would not empower the Federal Government to pass laws in any matters affecting State or local activities which heretofore it did not already possess. The convention also does not confer any power on consular officers with respect to the practice of law other than in accordance with the requirements of the applicable State law.

Article 1 is a definition of terminology appearing throughout the remaining 30 articles of the convention. Comparable articles, with a similar purpose, are found in the Consular Convention With Japan, and in the Vienna Convention on Consular Relations.

Articles 2 through 6 regulate such matters as the opening of consular establishments, the appointment and recognition of consular officers and employees, the nationality of consular officers, and the status of a temporary head of a consular establishment. The Vienna Convention on Consular Relations considers these matters in far greater depth, utilizing articles 2 through 4 and 6 through 24 to cover the establishment and conduct of consular relations.

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Article 2(1), providing that a consular establishment may be opened in the territory of the receiving state only with that state's consent, is of special interest. This provision highlights the actuality that the reciprocal opening of consulates by the United States and the Soviet Union does not automatically follow from the conclusion of this convention. The entry into force of this convention will simply provide that such consulates, when and if opened, will perform their respective functions pursuant to an agreed set of rules. Article 4 of the Vienna Convention on Consular Relations and article 3 of the Consular Convention With Japan contain similar provisions.

Article 2(8) is designed to insure that no person in the receiving state not already entitled to diplomatic immunity can be appointed as a consular officer or employee and granted full immunity from the criminal jurisdiction pursuant to article 19(2). No comparable provision is found in the Vienna Convention on Consular Relations or the Consular Convention With Japan, since these conventions do not provide a similar immunity from the local jurisdiction for consular officers.

Article 3, which is a limitation on the nationality of consular officers, must be considered in relation to other provisions of the convention which limit the privileges and immunities to be accorded to consular officers and employees who are either nationals of or permanently resident in the receiving state. Such limitations are found in articles 19(2), 20(2), 22, 23, 24, 25, and 26. Provisions which have the very same purpose are found in article 71 of the Vienna Convention on Consular Relations and article 25 of the Consular Convention With Japan.

Article 5 concerning the acquisition of consular premises is identical to article 30 of the Vienna Convention on Consular Relations. A more comprehensive related provision may be found in article 7 of the Consular Convention With Japan.

Articles 7 through 15 set forth the usual consular functions and the obligations and duties of the receiving state with respect thereto. These functions, many of which are included in article 7, include protecting the rights and interests of the sending state and its nationals, furthering the development of commercial, economic, cultural, and scientific relations, the authentication of legal documents, and certifying as to translations. A similar listing of consular functions is found in section 5 of the Vienna Convention on Consular Relations, while these functions are covered in greater detail in articles 15 and 17 of the Consular Convention With Japan.

In article 9 the receiving state undertakes the obligation, if relevant information is available, to inform the consular establishment of the death of a national of the sending state. A similar provision is found in article 37 of the Vienna Convention on Consular Relations.

In article 10 the powers of consular officers are outlined with respect to the estates of their deceased nationals and the transfer of their property. This article is virtually identical with the estates article contained in the Consular Convention With Japan, with the exception of paragraph (4) thereof. This paragraph (4) subjects the consular officer only to the civil jurisdiction of the receiving state, thus conforming with article 19(2) of the convention. Article 5(9) of the Vienna Convention on Consular Relations merely indicates a consular officer may safeguard the interests of his nationals in cases of succession, in accordance with the laws and regulations of the receiving state.

Article 12 is one of the most important articles of the convention. This article, as supplemented by the protocol (which is an integral part of the convention), provides that a consular officer has the right to communicate with, assist, and advise any national of the sending state. The access of such nationals to their consular establishment can in no way be restricted by the receiving state. This article also provides that the receiving state shall *immediately* inform a consular officer of the sending state about the arrest or detention of a national of the sending state; "immediately" is defined in the protocol as from 1 to 3 days. The article further provides that a consular officer of the sending state shall *without delay* have the right to visit and communicate with a national of the sending state who is under arrest or otherwise detained or imprisoned; "without delay" is defined as being from 2 to 4 days. The protocol also interprets article 12 as providing a continuing right of consular access to the national.

Article 36(b) of the Vienna Convention on Consular Relations requires the receiving state to inform the consular post without delay if a national of the sending state is arrested or committed to prison pending trial, or is detained in any other manner, if the national so requests. Article 36(c) of the Vienna Con-

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vention on Consular Relations provides consular officers the right to visit their nationals in custody unless the national opposes such a visit. Article 16 of the Japanese Consular Convention likewise requires the receiving state to inform a consular officer of the sending state if one of his nationals is confined awaiting trial or is otherwise detained, if the national so requests. This obligation is to be carried out immediately. The consular officer is given the right to visit his national without delay.

Articles 13 and 15 cover the customary activities of consular officers in regard to shipping and aviation matters. The Vienna Convention on Consular Relations considers shipping and aviation in an abbreviated fashion, while articles 19 through 29 of the Japanese Consular Convention regulate these matters in far greater detail.

Articles 16 through 29 set forth the rights, privileges, and immunities pertaining to the consular establishment and to the officers and employees thereof. For example, article 16 provides that the national flag and shield with the national coat of arms may be displayed. A similar provision is in article 8 of the Consular Convention With Japan, and in article 29 of the Vienna Convention on Consular Relations. Article 17 states that the consular establishment and the archives thereof are inviolable vis-a-vis receiving state authorities, who may not enter without appropriate approval. Similar inviolability is accorded to the consular archives by article 33 of the Vienna Convention on Consular Relations and article 8(3) (b) of the Consular Convention With Japan. Both article 31(b) of the Vienna Convention on Consular Relations and article 8(4) of the Consular Convention With Japan provide that, in case of such matters as fire or other disaster requiring prompt protective action, authorities of the receiving state may enter the consular premises. Precedent for the absolute inviolability provision of the Consular Convention With the Soviet Union is found in the 1928 Havana Consular Agents Convention, now in force between the United States and 12 Latin American countries.

Article 18 establishes the right of the consular establishment to have full communication with the government of the sending state. Article 35 of the Vienna Convention on Consular Relations provides, as does article 18 of the Soviet convention, that diplomatic couriers and pouches may be used by consular establishments. While article 35 of the Vienna Convention on Consular Relations and article 10 of the Consular Convention With Japan go on at some length in describing the privileges and immunities associated with the consular courier and consular pouch, it is the intent of article 18 of the Soviet convention that the rules of customary international law and practice concerning the diplomatic pouch and diplomatic couriers will govern this phase of full consular communication.

Article 19 concerns consular immunities. Article 19(1) is a standard provision in U.S. consular conventions and provides that consular officers and employees are not subject to the civil jurisdiction of the receiving state in matters relating to their official activities. Whether or not a matter is considered to relate to the official activities of such personnel is a decision for the courts of the receiving state. Article 43(1) of the Vienna Convention on Consular Relations and article 11(1) (a) of the Consular Convention With Japan provide a similar rule.

Article 19(2) provides full immunity from the criminal jurisdiction of the sending state for consular personnel who are nationals of the sending state. This provision will afford maximum protection to American consular personnel in the Soviet Union against arbitrary police action. On the other hand, three related provisions of the convention will protect against any abuse of such immunity from criminal jurisdiction. Article 2(7) recognizes, first of all, the right of the receiving state to declare consular personnel *persona non grata*. In this connection, since article 2(6) requires that all consular officers and employees must be notified to us "in advance," we would be able to screen such persons, and, by means of a *persona non grata* action, eliminate any whom we did not wish to act in a consular capacity clothed with full immunity from criminal jurisdiction. In this respect, article 28 is also important in that it states a duty for all persons enjoying such immunity to respect the laws and regulations of the receiving state, including traffic regulations.

Second, article 2(3) specifically provides that the receiving state must give prior approval to the head of the consular post before he assumes his duties. Finally, article 2(8) provides that the sending state may not appoint as a consular officer or employee a national of the sending state already present in the receiving state unless such official already possesses diplomatic immunity.

The convention's provisions on immunity from criminal jurisdiction have a potential application, by virtue of most-favored-nation clauses in other treaties, to consular personnel of some 35 other countries. Such most-favored-nation treatment will be operative only if these countries so request and agree to provide reciprocal treatment to U.S. consular personnel in those countries.

The Department has inquired concerning known criminal prosecutions against foreign consular officers in the last 25 years. There has been only 1 conviction in the 15 cases we have found. At least 10 of the cases (including 6 involving traffic violations) were dismissed because State courts lacked jurisdiction over consular officials by reason of a Federal statute—28 U.S.C. 1351. On the basis of this experience, the Department of State concludes that the problem of criminal jurisdiction with respect to consuls is one of readily manageable proportions.

The related provision of the Japanese Consular Convention is article 11(1)(b) which provides that a consular officer shall be exempt from arrest or prosecution in the receiving state except when charged with the commission of a crime which, upon conviction, might subject the individual guilty thereof to imprisonment for 1 year or more. A similar rule is found in article 41(1) of the Vienna Convention on Consular Relations which provides that a consular officer shall not be liable to arrest or detention pending trial except in the case of a grave crime.

Article 20 discusses the manner in which consular officers or employees give testimony as witnesses. Testimony is required on all matters except those concerning the official activities of such persons; only the locus of the testimony is made adjustable by the Convention. A similar provision is found in article 11(5) of the Consular Convention With Japan.

Articles 21 through 23 provide tax exemptions for lands and buildings of the sending state in the receiving state, as well as certain tax exemptions for consular officers or employees. Articles 12 and 13 of the Consular Convention With Japan, and articles 32, 49 and 51 of the Vienna Convention on Consular Relations provide for similar tax exemptions.

Articles 24 and 25 provide for consular personnel exemptions from compulsory military service and alien registration. Comparable provision may be found in articles 46, 47, and 52 of the Vienna Convention on Consular Relations, and in article 9 of the Consular Convention With Japan.

Article 26 provides customs privileges for the consular establishment and to consular officers and employees, on the same basis as is granted by the receiving state to the diplomatic mission of the sending state and the personnel thereof. Articles 14 of the Japanese Consular Convention and 50 of the Vienna Convention on Consular Relations provide equivalent privileges with respect to articles imported for the official use of the consular establishment, and for consular officers, while limiting the duty-free import privilege of consular employees to articles imported by them at the time of their first installation.

Article 27 authorizes freedom of travel for consular officers, subject to the laws and regulations of the receiving state. Consequently it does not obviate the necessity of compliance with regulations providing for closed or restricted zones and modes of travel. An identical provision is found at article 34 of the Vienna Convention on Consular Relations.

Article 28 sets forth a duty for consular officers and employees enjoying privileges and immunities to respect the laws and regulations of the receiving state. A similar obligation is contained in articles 55(1) of the Vienna Convention on Consular Relations and 26(3) of the Consular Convention with Japan.

Article 29 relates to the performance of consular functions by diplomatic officers. Likewise provisions are contained in article 6(3) of the Consular Convention with Japan and in article 70 of the Vienna Convention on Consular Relations.

Article 30 contains the final provisions relating to entry into force of the Convention. Article 27 of the Consular Convention with Japan is similar, while articles 74 through 79 of the Vienna Convention on Consular Relations contain more extensive and detailed provisions, due to the multilateral nature of the Convention.

The CHAIRMAN. Anything further you wish to say, Mr. Secretary?
Secretary RUSK. I think not. I think not, Mr. Chairman. Thank you very much.

The CHAIRMAN. Thank you very much.

The Committee is adjourned.

(Whereupon, at 11:50 a.m., the committee adjourned, subject to call of the Chair.)